

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FRANK M. McKEY, Trustee in Bankruptcy of  
TOMLINSON-HUMES, Incorporated, Bank-  
rupt,

Appellant,

vs.

ELI P. CLARK and LOS ANGELES WARE-  
HOUSE COMPANY, a Corporation,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Southern District of California,  
Southern Division.

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Filed

FEB 4 - 1910

F. D. Manckten,  
Clerk.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FRANK M. McKEY, Trustee in Bankruptcy of  
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HOUSE COMPANY, a Corporation,

Appellees.

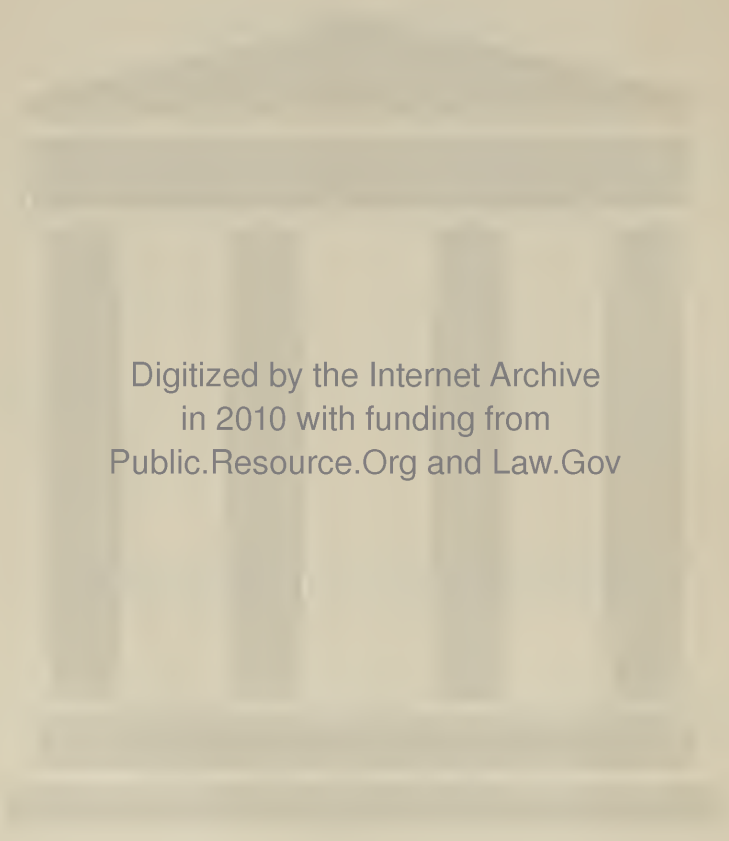
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys.**

For Appellant:

Messrs. MULFORD & DRYER, Suite 615 I. N.  
Van Nuys Bldg., Los Angeles, California,  
and

WILBUR BASSETT, Esq., 333 Van Nuys  
Building, Los Angeles, California.

For Appellee:

Messrs. HERBERT J. GOUDGE and HART-  
LEY SHAW, 1024 Washington Bldg., Los  
Angeles, California. [4\*]

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*In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division.*

FRANK M. McKEY, Trustee in Bankruptcy of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Citation [Original.]**

The President of the United States to Eli P. Clark  
and Los Angeles Warehouse Company, a Cor-  
poration, Greeting:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Ap-

\*Page number appearing at foot of page of original certified Record.

peals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California on the 11th day of November, next, pursuant to an order allowing an appeal entered in the clerk's office of the District Court of the United States for the Southern District of California, Southern Division, in that certain action No. A-101—Equity, in which Frank McKey, Trustee in Bankruptcy of Tomlinson-Humes, Incorporated, Bankrupt, is complainant and appellant and you are respondents and appellees, to show cause, if any there be, why the decree rendered against the said complainant and appellant as in this said order allowing an appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET, Judge of the United States District Court in and for the Southern District of California, Southern Division, this 13 day of Oct., 1915.

OSCAR A. TRIPPET,  
Judge. [5]

[Endorsed]: Original. No. A-101—Equity. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy, etc., Complainant, vs. Eli P. Clark et al., Respondents. Citation. Filed Oct. 14, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Due service and receipt of copy of within Citation

acknowledged this 13th day of October, 1915.

HERBERT J. GOUDGE,  
HARTLEY SHAW,  
Attorneys for Respondents. [6]

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**[Order Granting Motion for Leave to Amend Com-  
plaint.]**

*In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division.*

No. A -101—EQUITY.

FRANK M. McKEY, Trustee in Bankruptcy of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK and LOS ANGELES WARE-  
HOUSE COMPANY, a Corporation,  
Respondents. [7]

At a stated term, to wit, the July term, A. D. 1913,  
of the District Court of the United States of  
America, in and for the Southern District of  
California, Southern Division, held at the  
Courtroom Thereof, in the City of Los Angeles,  
on Wednesday, 17th day of December, in the  
Year of our Lord One Thousand Nine Hundred  
and Thirteen. Present: The Honorable OLIN  
WELLBORN, District Judge.

No. A -101—EQUITY.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on this day to be further heard on complainant's motion for an injunction *pendente lite*, pursuant to the prayer of the bill of complaint, and also to be further heard on defendants' motion to dismiss the bill of complaint, and also to be further heard on defendants' motion to strike out certain portions of paragraph V of the bill of complaint; Wilbur Bassett, Esq., and Geo. W. Dryer, Esq., appearing as counsel for complainant; Hartley Shaw, Esq., appearing as counsel for defendants; now comes said Wilbur Bassett, Esq., of counsel for complainant, and moves the Court for leave to amend the bill of complaint herein; and it is ordered that complainant's said motion for leave to amend the bill of complaint herein be, and the same hereby is granted, and that complainant be, and he hereby is granted leave so to amend within twenty (20) days.

[8]

**[Order Extending Time 10 Days to File Amended  
Bill of Complaint.]**

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 6th day of January, in the year of our Lord one thousand, nine hundred and fourteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. A -101—EQUITY.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

On motion of George W. Dryer, Esq., of counsel for complainants herein, and good cause appearing therefor, it is ordered that the time within which complainants may file their amended bill of complaint be and the same hereby is extended ten (10) days. [9]

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division*

FRANK M. McKEY, Trustee in Bankruptcy of  
the Estate of TOMLINSON-HUMES, IN-  
CORPORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK and LOS ANGELES WARE-  
HOUSE COMPANY, a Corporation,

Defendants.

**Amended Bill of Complaint in Equity.**

To the Honorable OLIN WELLBORN, Judge of  
said Court:

Now comes Frank M. McKey, Trustee in Bankruptcy of the estate of Tomlinson-Humes, Incorporated, bankrupt, and pursuant to leave heretofore granted, files this his amended bill of complaint and for cause of action against the defendant herein complains and alleges:

I.

That heretofore on the 17th day of July, 1913, a petition was filed in the District Court of the United States in and for the Northern District of Illinois, Eastern Division, wherein and whereby it was prayed that Tomlinson-Humes, Incorporated, be adjudged bankrupt within the purview and meaning of the acts of Congress in that regard; that thereafter on the 30th day of July, 1913, an order was entered in said court adjudging said [10] Tomlinson-Humes,



Incorporated, to be bankrupt; that thereafter an order of general reference was entered in said court referring said cause to Frank L. Wean, Esq., one of the referees in bankruptcy of said court; that thereafter upon due notice, a general meeting of the creditors of said bankrupt was held on the 28th day of August, 1913, before said referee; that at said meeting said referee did duly appoint this plaintiff trustee in bankruptcy of said estate; that thereafter this plaintiff did duly qualify as such trustee under said order by filing his certain bond therein, and that an order was thereafter duly entered by said referee in said proceeding upon the 29th day of August, 1913, approving plaintiff's said bond as trustee; that plaintiff is a citizen of the United States, and a resident of the city of Chicago, Illinois.

## II.

Plaintiff alleges that defendant Eli P. Clark is in possession and control of certain valuable assets and property of the estate of said bankrupt, to wit, twelve (12) oil paintings, reputed to be the work of one William Hogarth, sometimes collectively known as "Industry and Idleness Series," and further entitled and described as follows:

1. The Two Apprentices.
2. The Industrious Apprentice's Sunday Morning.
3. The Idle Apprentice's Sunday Morning.
4. The Industrious Apprentice Appointed Overseer.
5. The Idle Apprentice Sent to Sea.
6. The Marriage of the Industrious Apprentice.
7. Thomas Idle Returns from Sea.

8. Frank Goodchild Appointed High Sheriff. [11]
9. Tom Idle Betrayed by His Mistress.
10. Tom Idle Brought Before Alderman Goodchild.
11. The Execution of Thomas Idle.
12. Frank Goodchild Lord Mayor of London.

## III.

That said bankrupt being then and there in actual possession of said twelve (12) paintings on or about the month of January, 1913, did cause said twelve (12) paintings to be exposed for inspection and offered for sale in the residence of one William Clark, in New York City, New York; that thereafter, on or about the 11th day of September, 1913, while said paintings continued to be the property of said bankrupt and subject to its orders, and while said property was in the custody of the District Court of the United States, in and for the Northern District of Illinois, Eastern Division, and subject to orders of said court, the said Eli P. Clark, defendant, without warrant or right, and by inducement, means and agency of a purported order from said bankrupt, which plaintiff is informed and thereupon alleges was false, fraudulent and forged, did direct said William Clark to deliver said twelve (12) paintings to defendant Eli P. Clark at Los Angeles, California, and in pursuance of said purported order said paintings were thereafter shipped to said Eli P. Clark at Los Angeles, California.

## IV.

That said paintings were thereafter delivered to said Eli P. Clark and are now in his possession and control, and are, as plaintiff is informed and be-



lieves, stored and deposited in the rooms of the Los Angeles Warehouse Company, as agents and warehousemen for the said Eli P. Clark, in the said city of Los Angeles, California; that plaintiff since said delivery has [12] demanded possession of said twelve (12) paintings of and from said defendants, and each of them, but each of them has failed and refused, and still continue to fail and refuse to deliver said paintings or any of them to this plaintiff, and said paintings still continue in the possession and control of said defendants; that said Los Angeles Warehouse Company is a corporation duly organized, existing and acting under and by virtue of the laws of the State of California, having its principal place of business in the city of Los Angeles, California, and that said Eli P. Clark is a citizen of the United States, and resides at Los Angeles, California.

## V.

That plaintiff as trustee of the estate of Tomlinson-Humes, Incorporated, is entitled to the possession of said twelve (12) paintings.

## VI.

That William Hogarth the reputed author of said paintings is dead and that said paintings are of great peculiar and historic value and are unique and cannot be duplicated, and that their value is not readily susceptible of estimation, and that unless restrained by order of this Honorable Court the said defendants will cause or permit said twelve (12) paintings to be removed, altered, injured or carried away to parts

unknown to the great loss and injury of plaintiff and said estate, and that plaintiff is without other or adequate relief in the premises.

WHEREFORE, plaintiff prays that defendants be compelled to answer this amended bill within ten days from the filing hereof, but not under oath, their answer under oath being [13] expressly waived, and to abide and perform such order and decree in the premises as the Court shall deem proper and required by the principles of equity and good conscience, and that plaintiff may have a preliminary order restraining said defendants Eli P. Clark and Los Angeles Warehouse Company, and each of them, from assigning, alienating, removing, hypothecating, charging, altering or otherwise disposing of the said hereinbefore described property pending the issue of this action, and until final hearing herein, and until further order of this Court, and that upon a final hearing plaintiff may have a writ of injunction restraining said defendants Eli P. Clark and said Los Angeles Warehouse Company, and each of them, and their several agents, executors, administrators, attorneys and assigns, from selling, alienating, assigning, hypothecating, or otherwise disposing of, said twelve described oil paintings, or any part thereof, until the further order of this Honorable Court; that your Honor shall be pleased to order and decree an accounting by said defendants Eli P. Clark and Los Angeles Warehouse Company, and each of them, of the said matters and interests and assets, and that upon such accounting plaintiff shall be decreed to recover of and from said defendants such possession,

and such property and moneys as shall appear upon said accounting to be just and proper; that plaintiff may have an order and process directed to said defendants Eli P. Clark and Los Angeles Warehouse Company, a corporation, for possession of said paintings, or such part thereof as he shall appear to be entitled to; and for such other and further relief in the premises as to justice and equity shall appertain and to your Honor shall seem meet; and for plaintiff's costs herein expended.

MULFORD & DRYER,  
WILBUR BASSETT,

Attorneys for Plaintiff. [14]

United States of America,  
Northern District of Illinois,  
Eastern Division,—ss.

On this 6th day of January, 1914, before me personally appeared Frank M. McKey, the plaintiff above named, who being by me duly sworn, deposes and says: That he is the trustee in bankruptcy of Tomlinson-Humes, Incorporated, bankrupt; that he has read the foregoing amended bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

FRANK M. McKEY.

Subscribed and sworn to before me this 6th day of January, 1914.

[Seal]

FRANK R. LEONARD,  
Notary Public in and for the County of Cook, State  
of Illinois.

State of Illinois,  
Cook County,—ss.

I, Robert M. Sweitzer, County Clerk of the county of Cook, DO HEREBY CERTIFY that I am the lawful custodian of the official records of notaries public of said county, and as such officer am duly authorized to issue certificates of magistracy, that Frank R. Leonard whose name is subscribed to the annexed Jurat, was, at the time of signing the same a notary public in Cook [15] County, duly commissioned, sworn and acting as such, and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said State of Illinois, all of which appears from the records and files in my office; that I am well acquainted, with the handwriting of said notary, and verily believe that the signature to the said Jurat is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the county of Cook at my office in the city of Chicago, in the said county, this 6 day of Jan., 1914.

[Seal]

ROBERT M. SWEITZER,

County Clerk.

[Endorsed]: Amended Bill of Complaint in Equity. No. A-101. Original. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy of the Estate of Tomlinson-Humes, Incorporated, Plaintiff, vs. Eli P.

Clark and Los Angeles Warehouse Comapny, a Corporation, Defendant. Received copy of within Amended Bill of Complt. in Equity this 12 day of January, 1914. Hartley Shaw. By A. M. S., Attorney for Defendant Clark.

E. W. Freeman, Defendant.

“ “ “ L. A. Warehouse Co. Filed Jan. 12, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Mulford & Dryer and Wilbur Bassett, Suite 615 I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Plaintiff. Original. [16]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

No. A-101—In EQUITY.

FRANK M. McKEY, Trustee in Bankruptcy of the Estate of TOMLINSON-HUMES, INCORPORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK et al.,

Defendants.

**Answer.**

Now come Eli P. Clark and Los Angeles Warehouse Company, a corporation, defendants in the above-entitled case, and answer the amended bill of complaint herein, as follows:



## I.

Said defendants admit that the defendant Eli P. Clark, is in possession and control of the paintings described in said bill, and that the same are stored and deposited in rooms of the defendant, Los Angeles Warehouse Company, as agent and warehouseman for the said defendant Eli P. Clark, and allege that said defendant Los Angeles Warehouse Company, claims no right, title or interest in said pictures, except as such agent and warehouseman.

## II.

The defendants deny that any of the pictures described in said amended bill of complaint, is, or at any time has been, any part of the assets or property of the estate of Tomlinson-Humes, Incorporated, the bankrupt mentioned in said bill; and in [17] this connection, said defendants allege that each and every one of the said paintings is now, and ever since about the 11th day of May, 1912, has been the property of the defendant Eli P. Clark.

## III.

Defendants admit that on or about the month of January, 1913, the said Tomlinson-Humes, Incorporated, was in the actual possession of the said twelve paintings, and did on or about said date, cause said paintings to be exposed for inspection and offered for sale in the residence of one William A. Clark, in New York City, New York. The defendants allege that the said Tomlinson-Humes, Incorporated, then and there had the possession of said paintings, solely as agent and representative of said defendant Eli P.

Clark, for the purpose of making a sale thereof, and subject at all times to his orders as owner thereof; and further allege that the said Tomlinson-Humes, Incorporated, were acting solely as agent for said defendant Eli P. Clark, in causing said paintings to be so exposed for inspection and offered for sale in the residence of said William A. Clark.

IV.

Defendants deny that at any time since said paintings were placed in the said residence of William A. Clark, or at any time since May 11th, 1912, any of said paintings has been the property of said Tomlinson-Humes, Incorporated, or has been subject to the order of said Tomlinson-Humes, Incorporated, except as said corporation had the custody thereof, or gave orders in regard thereto, for the purpose of making a sale of said paintings as the agent of defendant Eli P. Clark. The defendants further deny that said paintings, or any of the same, have at any time been in the custody of the District Court of the United States, in and for [18] the Northern District of Illinois, Eastern Division, or subject to the orders of said court in any manner; and further deny that the defendant Eli P. Clark, without warrant or right, directed the said William A. Clark to deliver said paintings or any of the same to the defendant Eli P. Clark at Los Angeles, California, or elsewhere. Neither of said defendants has actual knowledge of the manner in which said William A. Clark was directed to deliver said paintings to defendant Eli P. Clark, for the reason that said direc-

tions were given by an agent of the said Eli P. Clark, but on their information and belief, these defendants deny that said direction was given by inducement, means or agency, of any order or purported order from said Tomlinson-Humes, Incorporated, or of any order which was false, fraudulent or forged.

## V.

These defendants deny that the plaintiff, as trustee of the estate of Tomlinson-Humes, Incorporated, or otherwise, is, or at any time has been, entitled to the possession of any of the said twelve paintings.

## VI.

These defendants deny that unless restrained by this court they will cause or permit said paintings, or any of the same, to be removed, altered, injured or carried away to parts unknown, or at all, except that said Eli P. Clark, may cause the same to be removed to the custody of other warehousemen or agents, instead of said Los Angeles Warehouse Company, if he so desires. Defendants deny that by any removal, alteration, injury or carrying away of said pictures, any loss or injury would be caused to plaintiff or the estate of said bankrupt. Said defendants further deny that the plaintiff is without any or adequate relief in the premises, except an injunction. Defendants allege that [19] plaintiff as trustee of said bankrupt estate could in no case have any right in said pictures, or any property, except for the pecuniary value thereof, to be applied as a part of said bankrupt's estate for the payment of its debts, and that the defendant Eli P. Clark, is solvent and amply



able to respond in damages to any amount which might be determined to be the value of said pictures, in case this court should determine said pictures to be the property of said estate.

WHEREFORE, defendants pray that judgment in this case be entered in favor of the defendants, and that they have their costs from the plaintiff.

HARTLEY SHAW,  
HERBERT J. GOUDGE,  
Attorneys for Defendants.

State of California,  
County of Los Angeles,—ss.

Eli P. Clark, being by me first duly sworn, deposes and says: That he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ELI P. CLARK.

SUBSCRIBED AND SWORN TO before me this  
19th day of January, 1914.

[Seal] A. I. SMITH,  
Notary Public in and for the County of Los Angeles,  
State of California. [20]

[Endorsed]: Original. No. A-101—In Equity. In the District Court of the United States, Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy, etc., Plaintiff, vs. Eli P. Clark, et al., Defendants. Answer. Filed Jan.

19, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Received copy of the within Answer this 19th day of January, 1914. Wilbur Bassett, Attorney for Plaintiff. G. E. Wilcox, Herbert J. Goudge and Hartley Shaw, 1024 Washington Building, Los Angeles, Cal., Attorneys for Defendants. [21]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

No. A-101—In EQUITY.

FRANK M. McKEY, Trustee in Bankruptcy of the Estate of TOMLINSON-HUMES, INCORPORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK et al.,

Defendants.

**Notice of Application for Leave to Amend Answer and File Counterclaim.**

To the Plaintiff Above Named, and to Messrs. Wilbur Bassett and Mulford & Dryer, His Attorneys:

You are hereby notified that the defendants will, on Monday, the 27th day of April, 1914, at 10:30 o'clock A. M. of said day, make application to the Court for leave to file an amended answer and counterclaim in the above-entitled action. A copy of said answer and counterclaim is served on you here-

with, and the said application will be made on the said proposed amended answer and counterclaim and on the records in the above-mentioned suit, and upon the ground that the defendants desire more fully to deny the allegations of the bill, and to set up the counterclaim above referred to.

HERBERT J. GOUDGE,

HARTLEY SHAW,

Attorneys for defendants.

[Endorsed]: Original. No. A-101—In Equity. In the District Court of the United States, Southern District of California, Southern Division. Frank M. McKey, Trustee, etc., Plaintiff, vs. Eli P. Clark et al., Defendants. Notice of Application for Leave to Amend Answer and File Counterclaim. Received copy of the within notice this 22 day of April, 1914. Wilbur Bassett & Mulford & Dryer, Attorneys for Plaintiff. Herbert J. Goudge, Hartley Shaw, 1024 Washington Building, Los Angeles, Cal., Attorneys for Defendants. Filed Apr. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [22]

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**[Order Allowing Defendant to File Cross-Bill, and to Amend Answer, and Granting Motion for Injunction Pendente Lite, etc.]**

At a stated term, to wit, the January term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the

courtroom thereof, in the city of Los Angeles, on Friday, the 6th day of March, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on this day to be further heard on complainant's motion for the issuance herein of an injunction *pendente lite*; Wilbur Bassett, Esq., appearing as counsel for complainant; Hartley Shaw, Esq., appearing as counsel for defendants; and said motion having been further argued, in support thereof, by Wilbur Bassett, Esq., of counsel for complainant, during which argument Geo. W. Dryer, Esq., of counsel for complainant, comes into court; and the interrogatories and answers of Eli P. Clark, one of the defendants, heretofore filed herein, having been offered and admitted in evidence on this hearing; and said motion having been further argued, in opposition thereto, by Hartley Shaw, Esq., of counsel for defendants, it is ordered that said defendants be, and they hereby are granted twenty (20) days within which to file a cross-bill of complaint herein, with the right reserved to complainant to demur to said cross-bill or move to strike the same out, and it is further ordered, on like motion, that defendants be, and they

hereby are granted [23] twenty (20) days within which to amend their answer herein; and this cause having thereupon been submitted to the Court for its consideration and decision on complainant's said motion for the issuance of an injunction *pendente lite* and the oral argument of said motion; it is ordered that complainant's said motion for the issuance in this cause of an injunction *pendente lite* be, and the same hereby is granted as prayed for, to which ruling of the Court, on motion of defendants and by direction of the Court, exceptions are hereby noted herein on behalf of said defendants. Whereupon, on motion of Wilbur Bassett, an injunction *pendente lite* herein is signed and filed in open court. [24]

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**[Order Granting Application to Amend Answer,  
and Denying Application to File Counterclaim,  
etc.]**

At a stated term, to wit, the January term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the 4th day of May, in the year of our Lord one thousand, nine hundred and fourteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, Trustee etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on to be heard on defendant's application for leave to amend their answer to the bill of complaint herein, and to file a counterclaim; Wilbur Bassett, Esq., appearing as counsel for complainant; Hartley Shaw, Esq., appearing as counsel for defendants; and said application having been presented by counsel, it is by the Court ordered that defendants' application for leave to amend their answer in the particulars set forth in said application be, and the same hereby is granted, and it is further ordered that the application of defendants for leave to file a counterclaim herein be, and hereby is denied, to which ruling of the Court, on motion of defendants and by direction of the Court, *on motion of defendants and by direction of the Court*, exceptions are hereby noted herein on behalf of said defendants. [25]



*In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division.*

No. A-101—IN EQUITY.

FRANK M. McKEY, Trustee in Bankruptcy of the  
Estate of TOMLINSON-HUMES, INCOR-  
PORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK et al.,

Defendants.

**Amended Answer.**

Now come the defendants, Eli P. Clark and Los Angeles Warehouse Company, a corporation, and file their amended answer to the amended bill of complaint herein, as follows:

I.

Said defendants admit that the defendant, Eli P. Clark, is in possession and control of the paintings described in said bill, and that the same are stored and deposited in rooms of the defendant, Los Angeles Warehouse Company, as agent and warehouseman for the said defendant, Eli P. Clark, and allege that said defendant, Los Angeles Warehouse Company, claims no right, title or interest in said paintings, except as such agent and warehouseman.

II.

The defendants deny that any of the pictures described in said amended bill of complaint, is, or at any time has been, [26] any part of the assets or

property of the estate of Tomlinson-Humes, Incorporated, the bankrupt mentioned in said bill; and in this connection, said defendants allege that each and every one of the said paintings is now, and ever since about the 11th day of May, 1912, has been the property of the defendant, Eli P. Clark.

### III.

Defendants admit that on or about the month of January, 1913, the said Tomlinson-Humes, Incorporated, was in the actual possession of the said twelve paintings, and did on or about said date, cause said paintings to be exposed for inspection and offered for sale in the residence of Hon. William A. Clark, in New York City, New York. The defendants allege that the said Tomlinson-Humes, Incorporated, then and there had the possession of said paintings, solely as agent and representative of said defendant Eli P. Clark, for the purpose of making a sale thereof, and subject at all times to his orders as owner thereof; and further allege that the said Tomlinson-Humes, Incorporated, were acting solely as agent for said defendant Eli P. Clark, in causing said paintings to be so exposed for inspection and offered for sale in the residence of said William A. Clark; and on information and belief allege that said Tomlinson-Humes, Incorporated, then and there stated to said William A. Clark, that said paintings were the property of the defendant Eli P. Clark.

### IV.

Defendants deny that at the time said paintings were removed from the said residence of William A.



Clark, or at the time such removal was directed, as set forth in paragraph III of said amended bill, any of said paintings was the property of said Tomlinson-Humes, Incorporated, or was subject to the order of said Tomlinson-Humes, Incorporated. The defendants further deny that said [27] paintings, or any of the same have at any time been in the custody of the District Court of the United States, in and for the Northern District of Illinois, Eastern Division, or subject to the orders of said Court, in any manner. Defendants further deny that the defendant Eli P. Clark, without warrant or right, directed the said William A. Clark to deliver said paintings or any of the same to the defendant Eli P. Clark at Los Angeles, California, or elsewhere. Neither of said defendants has actual knowledge of the manner in which said William A. Clark was directed to deliver said paintings to defendant Eli P. Clark, for the reason that said directions were given by an agent of the said Eli P. Clark, but on their information and belief, these defendants deny that said direction was given by inducement, means or agency, of any order or purported order from said Tomlinson-Humes, Incorporated, or of any order which was false, or forged.

## V.

These defendants deny that the plaintiff, as trustee of the estate of Tomlinson-Humes, Incorporated, or otherwise, is, or at any time has been, entitled to the possession of any of the said twelve paintings.

## VI.

These defendants deny that unless restrained by

this Court they will cause or permit said paintings, or any of the same, to be removed, altered, injured or carried away to parts unknown, or at all, except that said Eli P. Clark may cause the same to be removed to the custody of other warehousemen or agents, instead of said Los Angeles Warehouse Company, if he so desires. [28]

Defendants deny that by any removal, alteration, injury or carrying away of said pictures, any loss or injury would be caused to plaintiff or the estate of said bankrupt. Said defendants further deny that the plaintiff is without any or adequate relief in the premises, except an injunction. Defendants allege that the plaintiff as trustee of said bankrupt estate could in no case have any right in any of said pictures, except for the pecuniary value thereof, to be applied as a part of said bankrupt's estate for the payment of its debts, and that the defendant Eli P. Clark is solvent and amply able to respond in damages to any amount which might be determined to be the value of said pictures, in case this Court should determine said pictures to be the property of said estate.

WHEREFORE the defendants pray that the plaintiff take nothing by this action and the defendants recover their costs herein.

HERBERT J. GOUDGE,  
HARTLEY SHAW,

Attorneys for Defendants.

State of California,  
County of Los Angeles,—ss.

Eli P. Clark, being by me first duly sworn, deposes and says: That he is one of the defendants in the above-entitled action; that he has read the foregoing amended answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ELI P. CLARK. [29]

Subscribed and sworn to before me this 13th day of May, 1914.

[Seal]

GEO. H. CLARK,

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Original. No. A-101—In Equity. In the District Court of the United States, Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy, etc., Plaintiff, vs. Eli P. Clark et al., Defendants. Amended Answer. Filed May 13, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Received copy of the within Amd. Answer this 22d day of April, 1914. Wilbur Bassett, Mulford & Dryer, Attorneys for Plaintiff. Hartley Shaw and Herbert J. Goudge, 1024 Washington Building, Los Angeles, Cal., Attorneys for Defendants. [30]

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

FRANK M. McKEY, Trustee in Bankruptcy of the  
Estate of TOMLINSON-HUMES, Incorporated,  
Bankrupt,

Plaintiff,

vs.

ELI P. CLARK and LOS ANGELES WARE-  
HOUSE COMPANY, a Corporation,

Defendants.

### **Preliminary Injunction.**

WHEREAS, in the above-named cause it has been made to appear upon the verified bill of complaint filed herein, that a writ of injunction preliminary to the final hearing herein, is proper and that *prima facie*, the complainant is entitled thereto, enjoining the defendants herein from the acts complained of and threatened to be committed and due notice of application for such writ having been served upon defendants herein, and plaintiff and said defendants being each of them represented in open court pursuant to said notice, said defendants being heard, and the Court being advised in the premises and it appearing that plaintiff is a duly qualified and acting trustee in bankruptcy for the District Court of the United States for the Southern District of New York, and it further appearing that defendants should be enjoined and restrained from committing

the acts complained of and threatened to be committed,

NOW THEREFORE, it is ordered that the said Eli P. Clark and you the said Los Angeles Warehouse Company, a corporation, and each of you defendants herein, your agents, servants and attorneys, [31] and all persons acting or under your authority or direction be and you are hereby specially restrained and enjoined from selling, alienating, assigning, hypothecating or otherwise disposing of twelve oil paintings reputed to be the work of one William Hogarth, sometimes collectively known as "Industry and Idleness Series" and further particularly entitled and described as follows:

1. The Two Apprentices.
2. The Industrious Apprentice's Sunday Morning.
3. The Idle Apprentice's Sunday Morning.
4. The Industrious Apprentice Appointed Overseer.
5. The Idle Apprentice Sent to Sea.
6. The Marriage of the Industrious Apprentice.
7. Thomas Idle Returns from Sea.
8. Frank Goodchild Appointed High Sheriff.
9. Tom Idle Betrayed by His Mistress.
10. Tom Idle Brought Before Alderman Goodchild.
11. The Execution of Thomas Idle.
12. Frank Goodchild Lord Mayor of London.

until the trial of the issues herein and until the further order of this Court.



Dated at Los Angeles in said District this 6th day of March, 1914.

OLIN WELLBORN,  
Judge.

[Seal] Attest, etc., WM. M. VAN DYKE,  
Clerk U. S. District Court, Southern District of California.

By Leslie S. Colyer,  
Deputy.

[Endorsed]: No. A-101—Eq. In the District Court of the United States for the Southern District of California, Southern Division. Frank McKey, Trustee in Bankruptcy of the Estate of Tomlinson-Humes Incorporated, Bankrupt, Plaintiff, vs. Eli P. Clark, and Los Angeles Warehouse Company, a Corporation, Defendants. Preliminary Injunction. Mulford & Dryer, Suite 615 Van Nuys Bldg. and Wilbur Bassett, Attorney at Law, 446 Title Insurance Building, F2486—Main 5804, Los Angeles, Cal., Attys. for Pltff. Filed Mar. 6, 1914. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk [32]

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**[Order Appointing Notary to Take Certain  
Depositions.]**

At a stated term, to wit, the July term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 17th day of July, in the year of our Lord

one thousand nine hundred and fourteen,  
Present: The Honorable OLIN WELLBORN,  
District Judge.

No. A-101—EQUITY.

FRANK McKEY, etc.,

Complainant,

vs.

ELI P. CLARK, et al.,

Defendants.

Pursuant to the stipulation of the parties hereto, by their solicitors of record, on file herein, it is ordered that E. Carl Tourje, Notary Public, of Chicago, Illinois, be, and he hereby is appointed, authorized and empowered to take the depositions of certain witnesses, at Chicago, Illinois, pursuant to said stipulation, for use upon final hearing in this cause.

[33]

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**[Order That Cause be Stricken from Calendar for Further Hearing on Motion for Order Directing Issuance of a Commission to Take Depositions.]**

At a stated term, to wit, the July term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 6th day of November, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, as Trustee, etc.,  
Complainant,

vs.

ELI P. CLARK,  
Defendant.

This cause coming on this day to be further heard on a motion for an order directing the issuance of a commission herein for the taking of depositions; now, no counsel appearing on behalf of either of the parties to this cause, and good cause appearing for such action, it is ordered that this cause be stricken from the calendar for said hearing. [34]

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[Minutes, July 21, 1915—Final Hearing.]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 21st day of July, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, as Trustee,  
Complainant,

vs.

ELI P. CLARK et al.,  
Defendants.



This cause coming on this day for final hearing in open court; George W. Dryer, Esq., and Wilbur Bassett, Esq., appearing as counsel for complainant; Hartley Shaw, Esq., and Herbert J. Goudge, Esq., appearing as counsel for defendants; H. H. Harris being present as shorthand reporter of the proceedings, and acting as such; and an opening statement of complainant's case having been made by Wilbur Bassett, Esq., of counsel for complainant; and an opening statement of defendants' defense having been made by Herbert J. Goudge, Esq., of counsel for defendants, and a further statement of complainant's case having been made by Wilbur Bassett, Esq., of counsel for complainant; and complainant having offered an exhibit, which is admitted in evidence in its behalf, to wit, Compls. Ex. 1, memorandum of dates involved herein; and portions of depositions taken on behalf of complainant and on file herein having been read to the Court by [35] Wilbur Bassett, Esq., of counsel for complainant; and Court, at the hour of 11:01 o'clock, A. M., having taken a recess for 4 minutes; and now, at the hour of 11:05 o'clock, A. M., Court having reconvened; and counsel and shorthand reporter being present as before; and the reading of the aforesaid depositions on behalf of complainant having been resumed and continued by Wilbur *Wilbur* Bassett, Esq., and George W. Dryer, Esq., of counsel for complainant; and Court, at the hour of 12 o'clock, M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., Court having reconvened; and counsel and shorthand re-

porter being present as before; and the reading of the aforesaid depositions on behalf of complainant having been resumed and continued by Wilbur Bassett, Esq., of counsel for complainant; it is, at the hour of 4:30 o'clock, P. M., ordered that this cause be, and the same hereby is continued until Thursday, the 22d day of July, 1915, at 10 o'clock, A. M. [36]

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**[Minutes, July 22, 1915—Final Hearing, Resumed.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 22d day of July, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, as Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on this day for further proceedings and orders on final hearing in open court; George W. Dryer, Esq., and Wilbur Bassett, Esq., appearing as counsel for complainant; Hartley Shaw, Esq., and Herbert J. Goudge, Esq., appearing as counsel for defendants; H. H. Harris being present as shorthand reporter of the testimony and

proceedings, and acting as such; and Wilbur Bassett, Esq., of counsel for complainant, having resumed and concluded the reading to the Court of depositions heretofore taken and filed herein on behalf of complainant, and having also read to the Court the interrogatories propounded to complainant to defendant Clark and said defendant's answers thereto, heretofore filed in this cause, and all depositions herein having been offered and admitted in evidence, subject to such objections as have been made thereto; and all of the depositions heretofore filed herein having been offered and received [37] in evidence subject to objection made at the taking thereof; and complainant having rested; and E. P. Clark, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony; and defendants having rested; and Court, at the hour of 11:19 o'clock, A. M., having taken a recess for 5 minutes; and now, at the hour of 11:25 o'clock, A. M., Court having reconvened; and counsel and shorthand reporter being present as before; and said cause having been argued on behalf of complainant by Wilbur Bassett, Esq., of counsel for complainant; and Court, at the hour of 12 o'clock, P. M., *Court* having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., Court having reconvened; and counsel and shorthand reporter being present as before; and, after the transaction of certain business in a criminal cause, this cause having been further argued, on behalf of complainant, by Wilbur Bassett, Esq., of counsel for

complainant, and on behalf of defendants by Herbert J. Goudge, Esq., of counsel for defendants, and on behalf of complainant in reply by Wilbur Bassett, Esq., of counsel for complainant; it is ordered that this cause be, and the same is submitted to the Court for its consideration and decision on the pleadings and proofs and the argument of said cause, the Court indicating that a decision will be rendered herein on Monday, July 26th, 1915, at 10 o'clock, A. M. [38]

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**[Order That Bill of Complaint be Dismissed, etc.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the 2d day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, as Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

George W. Dryer, Esq., and Wilbur Bassett, Esq., appearing as counsel for complainant; Herbert J. Goudge, Esq., appearing as counsel for defendants; H. H. Harris being present as shorthand reporter of

the proceedings; this cause having heretofore been submitted to the Court for its consideration and decision on the pleadings and proofs; the Court, having duly considered the same and being fully advised in the premises, now orally announces its conclusions, and it is ordered that the bill of complaint be dismissed, a decree accordingly to be prepared by counsel for defendants and submitted for the Court's action on Tuesday, the 3d day of August, 1915, at 10 o'clock, A. M. [39]

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**[Order Staying Effect and Operation of Decree  
Until September 8, 1915.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 5th day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

Wilbur Bassett, Esq., and Geo. W. Dryer, Esq., appearing as counsel for complainant; Herbert J. Goudge, Esq., appearing as counsel for defendants;



a proposed final decree herein having been presented in open court, and said counsel for complainant having made application for the withholding of the Court's action thereon, and said application having been argued, on behalf of complainant, by Wilbur Bassett, Esq., of counsel for complainant, and on behalf of defendants by Herbert J. Goudge, Esq., of counsel for defendants; and Court having, at the hour of 2:55 o'clock, P. M., taken a recess for 20 minutes; and now, at the hour of 3:15 o'clock, P. M., Court having reconvened; and counsel being present as before; said decree is now signed and filed and directed to be entered, and it is by the Court ordered that the effect and operation of said decree be stayed until the 8th day of September, 1915. Said decree is as follows:

\* \* \* \* \*

(Omitted here, as it appears in copy of enrolled papers.) [40]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

FRANK M. McKEY, Trustee in Bankruptcy of the Estate of TOMLINSON-HUMES, INCORPORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK and LOS ANGELES WAREHOUSE COMPANY, a Corporation,  
Defendants.



**Decree.**

This cause came on to be heard at this term and was argued by counsel for the respective parties, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to wit:

I.

That the preliminary injunction heretofore granted in the above-entitled cause whereby the defendants and each of them were restrained from selling, assigning, alienating, hypothecating, or otherwise disposing of the twelve paintings in the bill of complaint herein described, until the final hearing and determination of the issues in said cause, be and the same is hereby dissolved.

II.

That the plaintiff take nothing by this action, and the [41] plaintiff's bill herein be and the same is hereby dismissed, and that the defendants recover their costs herein.

DONE in open court this 5th day of August, 1915.

OSCAR A. TRIPPET,  
Judge.

Decree entered and recorded August 5, 1915.

WM. M. VAN DYKE,  
Clerk.

By Leslie S. Colyer,  
Deputy Clerk.

[Endorsed]: Original. A-101—Eq. In the District Court of the United States, in and for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy of the

Estate of Tomlinson-Humes, Incorporated, Bankrupt, Plaintiff, vs. Eli P. Clark and Los Angeles Warehouse Company, a Corporation, Defendant. Decree. Filed Aug. 5, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [42]

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**[Order that Injunction Remain in Force Until  
September 10, 1915.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 7th day of September, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

On motion of Wilbur Bassett, Esq., of counsel for complainant, it is ordered that the injunction heretofore issued herein be and remain in full force and effect until Friday, the 10th day of September, 1915, in the forenoon of said day. [43]

**[Order Continuing Cause Until September 20, 1915.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 10th day of September, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

Good cause appearing therefor, at the request of counsel, it is ordered that this cause be, and the same hereby is continued until Monday, the 20th day of September, 1915, for the presentation of papers concerning an appeal herein for the Court's action thereon. [44]

[Order Entered September 20, 1915, Continuing  
Hearing on Settlement of Statement on Appeal  
for One Week.]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the 20th day of September, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQ.

FRANK M. McKEY, Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on at this time to be heard upon the settlement of the statement of complainant on appeal herein; Wilbur Bassett, Esq., appearing as counsel for complainant, and Hartley Shaw, Esq., and Herbert J. Goudge, Esq., appearing as counsel for defendants; and proposed amendments to the proposed statement on appeal having been filed herein in open court on behalf of defendants, and this cause having been argued in support of the application of complainant for settlement of the statement on appeal heretofore filed herein by Wilbur Bassett, Esq., of counsel for complainant, and in

opposition thereto by Hartley Shaw, Esq., of counsel for defendant; and further in support thereof by Wilbur Bassett, Esq., of counsel for complainant, it is thereupon ordered that this cause be, and the same hereby is continued one (1) week for said hearing. [45]

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**[Order Entered September 27, 1915, Continuing Hearing on Settlement of Statement on Appeal for One Week.]**

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the 27th day of September, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, Trustee, etc., :  
Complainant, .

vs. :

ELI P. CLARK et al.,  
Defendants.

This cause coming on this day to be heard on settlement of statement on appeal; now, on motion of Hartley Shaw, Esq., of counsel for defendants, and no counsel appearing on behalf of complainants, it is ordered that this cause be, and the same hereby is continued one (1) week for said hearing. [46]

[Minutes, October 4, 1915—Re Order Approving  
and Certifying Statement on Appeal, etc.]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the 4th day of October, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-101—EQUITY.

FRANK M. McKEY, as Trustee, etc.,

Complainant,

vs.

ELI P. CLARK et al.,

Defendants.

This cause coming on this day to be heard on a settlement of a statement on appeal herein; and a statement on appeal pursuant to the stipulation by and between counsel for the respective parties at the foot thereof, having been presented to the Court by Wilbur Bassett, Esq., of counsel for complainant, an order approving and certifying said statement on appeal is signed in open court, and said statement on appeal so allowed by the Court, is thereupon filed.

Thereafter, at the afternoon session of the court, an order allowing appeal and restraining the injunction heretofore issued herein and continuing the same in force until the further order of the Court



and fixing the amount of bond on appeal, is signed and filed in open court. Said order allowing appeal, etc., is as follows, viz:

\* \* \* \* \*

(Omitted here, as same appears elsewhere in this transcript.) [47]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

FRANK M. McKEY, Trustee in Bankruptcy of the Estate of TOMLINSON-HUMES, INCORPORATED, Bankrupt,

Plaintiff,

vs.

ELI P. CLARK and LOS ANGELES WAREHOUSE COMPANY, a Corporation,

Defendants.

### **Statement of Appeal.**

The said cause came on regularly for trial in the above court, before Honorable Oscar A. Trippet, Judge thereof, on the 21st day of July, 1915, and was duly heard upon the merits, plaintiff being represented by Wilbur Bassett, Esq., and Messrs, Mulford & Dryer, and the defendants being represented by Herbert J. Goudge, Esq., and Hartley Shaw, Esq., and at said trial the following evidence was introduced, and the following proceedings were had:

**[Deposition of Herbert O. Tomlinson.]**

The deposition of Herbert O. Tomlinson was read, as follows :

I was formerly treasurer and general manager of Tomlinson-Humes, Incorporated. I was connected with that company from its organization in December, 1911. I know Thomas Myers of Buffalo, and am acquainted with the circumstances of the negotiations for the purchase of the Hogarth pictures from him. Those pictures first came into our possession in February, 1912. They were shipped to us from New York, March 15, 1912, on instructions from Mr. Myers. [48]

The pictures were received by the bankrupt and were held in our stock-room for some weeks, and shipped to Buffalo early in May of the same year, in such a way that they could be claimed by Mr. Humes and myself when we went there. There were present in Buffalo at that time Mr. Humes, Mr. McArdele and myself, and present at some of the interviews, Mr. Myers, Miss Myers, his daughter and Mr. Spaulding, his attorney. Mr. Burnett was also there one day.

I was general manager for the concern. The business of the art department was in charge of Mr. Humes. After my return to Chicago from Buffalo the pictures were returned to Chicago in a few days, and were in our possession for some months in Chicago. They were later shipped to Akron where they remained several weeks. They were returned to our rooms in Chicago and a few weeks later shipped to New York to Seymour J. Thurber; he was

then in the employ of the bankrupt and they were shipped to him in that capacity, for the purpose of exhibiting them with the expectation of selling them. Tomlinson-Humes did not, that I know of, at any time after these pictures were shipped to Mr. Thurber in New York, authorize Mr. Thurber or any one to deliver these paintings to Eli P. Clark, defendant in this case.

I believe negotiations between our corporation and Mr. Myers, prior to the 15th of March, 1912, resulted in the execution of a document or contract signed by Mr. Humes on the part of our company, and by Mr. Myers. I have seen the document. I do not know where it is now. I have not seen it for a long time. To the best of my recollection it was signed late in the summer or early in the autumn of 1911. There was a letter from Mr. Myers stating that he had ordered the paintings shipped to us. It was dated March 13, 1912. When we received that letter [49] I recognized the pictures referred to in it as the pictures covered by the contract between Mr. Myers and Tomlinson-Humes, Incorporated.

We went to Buffalo, N. Y., in the early part of May, 1912. I was accompanied by Mr. Humes and Mr. McArdle. We had the first negotiations in Mr. Spaulding's office in Buffalo. Mr. Bennett reached Buffalo the next day after that. I knew Mr. Bennett as the nephew and agent of Mr. E. P. Clark of Los Angeles. There were two instruments executed in Buffalo. One of them was a bill of sale from Thomas Myers to Tomlinson-Humes,, Incorporated, marked Defendants' Exhibit 2.

[Defendants' Exhibit No. 2—Bill of Sale.]

KNOW ALL MEN BY THESE PRESENTS, THAT, We, Thomas Myers, individually and as sole legatee under, and Beatrice A. Myers, individually and as sole executrix of, the Last Will and Testament of Sarah Ann Myers, both of Buffalo, Erie County, New York, parties of the first part, for and in consideration of the sum of Two (\$2.00) Dollars, lawful money of the United States, to them in hand paid, at or before the *ensealing* and delivery of these presents and other good and valuable consideration to them made by Tomlinson-Humes, Incorporated, of Chicago, Cook County, Illinois, of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, its successors and assigns the following named and described fourteen reputed original paintings to be by the respective Artists, as follows, viz:

The Industrious and Idle Apprentices Series, by William Hogarth, comprising the following, namely:

1. "The Two Apprentices."
2. "The Industrious Apprentice's Sunday Morning."
3. "The Idle Apprentice's Sunday Morning."
- [50]
4. "The Industrious Apprentice Appointed Overseer."
5. "The Idle Apprentice Sent to Sea."
6. "The Marriage of the Industrious Apprentice."
7. "Thomas Idle Returns from Sea."

8. "Frank Goodchild Appointed High Sheriff."
9. "Tom Idle Betrayed by His Mistress."
10. "Tom Idle Brought Before Alderman Goodchild."
11. "The Execution of Thomas Idle."
12. "Frank Goodchild Lord Mayor of London."

The Vale of Tempe, reputed original painting by J. M. W. Turner and The Fete of Champetre reputed original painting by Jean Antoine Watteau.

TO HAVE AND TO HOLD the same unto the said party of the second part its successors and assigns forever. And we do covenant to and with the said party of the second part that we are the owners and have the right to sell and transfer the said property, and will defend the same against any person or persons whomsoever claiming the same.

IN WITNESS WHEREOF, we have hereunto set out hands and seals the 11th day of May, in the year one thousand nine hundred and twelve.

THOMAS MYERS, (L. S.)

Individually and as Sole Legatee Under the Last Will and Testament of Sarah Ann Myers, Deceased.

BEATRICE A. MYERS, (L. S.)

Individually and as Sole Executrix of the Last Will and Testament of Sarah Ann Myers, Deceased.

[51]

State of New York,  
County of Erie,  
City of Buffalo,—ss.

On this 11th day of May in the year one thousand nine hundred and twelve before me, the subscriber,



personally appeared Thomas Myers, individually and as sole legatee of the last will and testament of Sarah Ann Myers, deceased, Beatrice A. Myers, individually and as executrix of the last will and testament of Sarah Ann Myers, deceased, and Thomas Myers, to me personally known to be the same persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

[Seal]

WILLIS M. SPAULDING,  
Notary Public, Erie Co., N. Y. [52]

The other document was a bill of sale from Tomlinson-Humes, Incorporated, to Eli P. Clark, marked Defendants' Exhibit 3.

**[Defendants' Exhibit No. 3—Bill of Sale.]**

KNOW ALL MEN BY THESE PRESENTS, THAT the undersigned Tomlinson-Humes, Incorporated of Chicago, Cook County, Illinois, of the first part, for and in consideration of the sum of two (\$2.00) Dollars, lawful money of the United States to it in hand paid, at or before the ensealing and delivery of these presents and other good and valuable considerations to it made by E. P. Clark of Los Angeles, California, of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said party of the second part, his executors, administrators and assigns under and subject to the terms of sale contained in agreement of March 28, 1912, between the parties hereto and pursuant to the sale therein contained the following described paint-



ings reputed to be originals by the respective artists following, namely:

The Industrious and Idle Apprentices Series, by William Hogarth, comprising the following namely;

1. "The Two Apprentices."
2. "The Industrious Apprentice's Sunday Morning."
3. "The Idle Apprentice's Sunday Morning."
4. "The Industrious Apprentice Appointed Overseer."
5. "The Idle Apprentice Sent to Sea."
6. "The Marriage of the Industrious Apprentice."
7. "Thomas Idle Returns from Sea."
8. "Frank Goodchild Appointed High Sheriff."
9. "Tom Idle Betrayed by his Mistress." [53]
10. "Tom Idle Brought Before Alderman Goodchild."
11. "The Execution of Thomas Idle."
12. "Frank Goodchild Lord Mayor of London."

The Vale of Tempe, original painting by J. M. W. Turner; The Fete of Champetre, original painting by Jean Antoine Watteau.

TO HAVE AND TO HOLD THE same unto the said party of the second part, his executors, administrators and assigns forever, and it does covenant to and with the said party of the second part that it is the owner nad has the right to sell and transfer the said property, and will defend the same against any person or persons whomsoever claiming the same.

IN WITNESS WHEREOF said Tomlinson-Humes, Incorporated, has caused its name to be sub-

(Depositions of Herbert O. Tomlinson.)

scribed by its president and sealed with its seal the 11th day of May, in the year one thousand nine hundred and twelve.

TOMLINSON-HUMES, Inc.

By W. Y. C. HUMES,  
Its President.

In presence of:

E. J. McARDLE. [54]

After these papers were executed, they were delivered to Mr. Bennett then and there. My recollection is the papers were finally signed in the La Fayette Hotel, in the room of Mr. Humes or myself. We had adjoining rooms and Mr. McArdle also had one adjoining. They opened into each other.

Q. At the time these documents were delivered to Mr. Bennett was the actual physical possession of the paintings turned over to him?

A. I believe it was.

Mr. McArdle, who is now interrogating me upon the taking of this deposition, was the same person who accompanied me on that trip to Buffalo.

Q. Did he not at that time, acting under your instructions, have instructions and directions to see that these things were properly transferred and delivered to Mr. Bennett for Mr. Clark? A. Yes.

The writing on the bill of sale from Tomlinson-Humes to Clark, Exhibit 3, is in Mr. McArdle's handwriting; the signature is Mr. Humes'. The writing is as follows:

“Received from Henry C. Bennett agent for E. P. Clarke assignee in above bill of sale the paintings

(Depositions of Herbert O. Tomlinson.)

therein assigned to hold the same under the terms of the contract of March 28th, 1912, therein referred to, the possession being delivered in the Lafayette Hotel, Buffalo, *Buffalo*, N. Y., after the paintings had been identified by Mr. Thomas Myers mentioned in said contract of March 28th, 1912.

Dated this 11th May, 1912.

TOMLINSON-HUMES, Inc.,

By W. Y. C. HUMES,

Prest." [55]

I presume I read that document at the time. It refers to an agreement of March 28th, 1912. That original document was present in Buffalo at the time these documents, Exhibits 2 and 3 were delivered to Mr. Bennett.

Thereupon Defendants' Exhibit 4 attached to the depositions was introduced in evidence, being a contract dated March 28, 1912, between Tomlinson-Humes, Incorporated, and E. P. Clark. Said exhibit is as follows:

[Defendants' Exhibit No. 4—Contract.]

“MEMORANDA OF AGREEMENT, Made and entered into this Twenty-eighth day of March, Nineteen Hundred and Twelve, by and between the following parties, viz:

TOMLINSON-HUGHES, INCORPORATED, of Chicago, Cook County, Illinois, first party, and

ELI P. CLARK, of Los Angeles, Los Angeles County, California, second party.

WHEREAS first party now has an option on fourteen (14) certain paintings from Thomas Myers, of

Buffalo, New York, and second party hereby agrees to purchase same from first party, and

WHEREAS said fourteen (14) paintings are listed and described as follows:

Twelve (12) paintings by William Hogarth, known as "Industry and Idleness" Series consisting of the following paintings and bearing the following titles:

1. The Two Apprentices.
2. The Industrious Apprentice's Sunday Morning.
3. The Idle Apprentice's Sunday Morning.
4. The Industrious Apprentice Appointed Overseer.
5. The Idle Apprentice Sent to Sea.
6. The Marriage of the Industrious Apprentice.
7. Thomas Idle Returns from Sea. [56]
8. Frank Goodchild Appointed High Sheriff.
9. Tom Idle Betrayed by his Mistress.
10. Tom Idle Brought Before Alderman Goodchild.
11. The Execution of Thomas Idle.
12. Frank Goodchild Lord Mayor of London.

Price named for above twelve paintings in option above referred to \$50,000.

One painting known as "The Vale of Tempe"—J. M. W. Turner.

Price in option above referred to \$25,000.

One painting known as "Fete Champetre"—Jean Antoine Watteau. Price in option above referred to \$4,000.

AND WHEREAS first party have in their possession by reason of their option from Mr. Myers, certain newspaper clippings; copies of letters; copy of

(Deposition of Herbert O. Tomlinson.)

a receipt to Mr. Thomas Myers for Twelve Thousand Pounds (£12,000), the original price paid by him for the twelve Hogarths; books, catalogs, and other documents bearing upon the history and authenticity of the above-described fourteen paintings; and

WHEREAS first party has an agreement with the said Thomas Myers to turn over the original letters and receipt in so far as they now exist, to first party, first party in turn will turn over to second party the original documents received from the said Thomas Meyers on which the proof of the authenticity of said fourteen paintings is based, and such documents shall be attached hereto and made a part of this agreement.

These original documents mentioned above are to be the same as the copies now pasted in a scrap-book bound in yellow paper covers and now in the possession of the first party.

WHEREAS second party hereby engages the services of first party, from March 28, 1912, to July 28, 1914, to resell such [57] paintings for him at a profit, and in order that first party may be compensated for their services in discovering these paintings and presenting this option to second party and for the work which they will be expected to do and for the expenses to which they will be put by reason of this undertaking as provided for herein in preparing a campaign for a resale of said paintings as provided for herein and for properly preparing them for such resale, second party hereby purchases from first party above named fourteen



(Deposition of Herbert O. Tomlinson.)

paintings and each and every one of them, (paying them a profit over and above their option price from the said Thomas Myers) for a total price of \$125,000, and contemporaneously herewith makes payment for such paintings with four (4) promissory notes of Thirty-one Thousand Two Hundred Fifty Dollars (\$31,250) each, with interest from date at the rate of six (6) per cent per annum, and due respectively January 28, 1913, July 28, 1913, January 28, 1914 and July 28th, 1914, due and payable at the National Produce Bank of Chicago, Illinois. It being understood that second party allows first party to make the profit represented by the difference between the price which they have to pay Mr. Myers and the purchase price herein named, by reason of the provisions hereinafter contained which make it obligatory upon first party to stand all expenses in handling a resale of said paintings without charge to second party, and for the further reason that second party is to have the expert services of the first party and their organization for the resale of these paintings.

It is further understood that if first party can obtain any concession by way of commission or reduction in price from said quoted option price from the said Thomas Myers, they are to have the same as compensation for their work in bringing the matter [58] to the attention of second party and of disposing of them for Mr. Myers.

THIS AGREEMENT further witnesseth that second party, in consideration of the premises and of



(Deposition of Herbert O. Tomlinson.)

the mutual agreements herein contained, employs first party as his agents and brokers from March 28, 1912, to July 28, 1914, and first party hereby accepts this employment and agrees to serve second party as brokers and agents in the sale and disposition of said paintings.

1. First party is to have the exclusive right and interest in all of said paintings to sell and dispose of said paintings and each of them, except that the Twelve Hogarths must be sold as a whole, and first party has no right to sell one or any number of them less than the whole separately without the written consent of second party.

2. First party shall not have the right to sell, without the written consent of the second party, any of said fourteen paintings at prices less than those set opposite each as per the following list and prices:

Twelve Hogarths, to be sold as one \$480,000

“Vale of Tempe” Turner . . . . . 200,000

“Fete Champetre” Watteau . . . . . 200,000

3. In case of a sale or sales, the first moneys received from such sale or sales are to be applied to the payment of the said four notes of \$31,250 each and interest at six per cent per annum, until said four notes are entirely paid and returned to second party so marked.

4. Until a sale or sales have been made to the extent of \$125,000 and accrued interest on said four notes of \$31,250 [59] each, no compensation shall be due from second party to first party for any efforts, time or expense to which first party may have

(Deposition of Herbert O. Tomlinson.)

gone by reason of their efforts to make resales of said paintings.

5. When first party has made a sale or sales aggregating \$125,000 and accrued interest on said four notes of \$31,250 each, to date of sale, if such sale or sales are in excess of said \$125,000 and accrued interest to date of sale, then the first party is to be entitled to fifty (50) per cent of such excess as commission in compensation of their work and efforts in connection with the paintings and the sale or sales.

6. After first party shall have made a sale or sales of sufficient amounts to turn over to second party \$125,000 and accrued interest to date of sale or sales, then first party is to be entitled to fifty (50) per cent of all future sales which may be made of any or all of such paintings as may remain on hand from the original fourteen described herein.

7. Second party has the right within thirty (30) days after the expiration of one year from this date, to withdraw from sale any or all of said fourteen paintings by payment to first party of ten (10) per cent of the minimum selling price of such painting or paintings as hereinbefore provided, viz., ten per cent of \$480,000 for the withdrawal of the twelve Hogarths, and ten (10) per cent of \$200,000 for the withdrawal of "The Vale of Tempe"—Turner, and ten (10) per cent of \$200,000 for the withdrawal of the "Fete Champetre"—Watteau.

It is understood, however, that no one or more of

the Hogarths less than the total number may be withdrawn.

But, it is understood that if at any time prior to the exercise of this right of withdrawal, first party has referred [60] to second party an offer of sale to *second party* of any or all of said fourteen paintings at a price or prices lower than the fixed minimum selling price as hereinbefore provided, and such offer has been rejected by second party as being too low an offer for such painting or paintings, then second party in pursuance of his right of withdrawal as provided for in this clause, shall only be required to pay ten (10) per cent of the amount of the rejected offer for the withdrawal of any painting or paintings covered by such rejected offer. It is understood, however, that no one or more of the Hogarths less than the total number may be withdrawn.

8. At any time that a sale is made of the twelve Hogarths, or either of the other two pictures, second party has the right, within thirty (30) days after such sale, to withdraw any remaining paintings from sale by giving first party written notice of such withdrawal within thirty (30) days from date of sale, by payment to first party of ten (10) per cent of the minimum selling price of said painting or paintings as hereinbefore provided, it being understood, however, that no one or more, less than the whole of the twelve Hogarths, can be withdrawn under the provisions of this clause.

9. It is understood that if second party does not avail himself of the above-described rights to with-

draw any painting from sale within thirty days (30) after the expiration of one year from this date, when the paintings at that time on hand shall remain in the hands of first party exclusively for a period of one year from that date under the provisions of this agreement.

10. If at the time of any sale, second party does not avail himself of his right, under the terms of this agreement as hereinbefore provided, to withdraw from sale any or all paintings [61] remaining on hand, then such paintings remaining on hand shall be left exclusively in the hands of first party for sale under the terms of this contract, for one year from date of such sale, or until the expiration of this contract, if one year from date of such sale would operate to extend the selling rights of first party beyond the expiration of this contract.

11. At the expiration of this contract on July 28, 1914, second party shall have the right to withdraw from sale and from the hands or agency of first party without any payment of any nature whatever to first party for commissions, bonuses, or for any labor or expense in connection with said paintings, undergone by first party, all paintings unsold.

12. First party agrees to exercise their best efforts to resell said paintings and each of them at or in excess of the minimum prices as hereinbefore provided.

13. First party are to pay, without charge to second party, all costs and expenses of handling, caring for and keeping of said paintings and making resale

thereof, including payment of commissions to salesmen or agents. First party are also to pay all fees, without charge to second party, to experts for work done in connection with the authentication and looking up and writing the history of said paintings. First party are also to pay, without charge to second party, all of their railroad fares, hotel bills, and other expenses in connection with the handling and reselling of said paintings.

14. First party is to keep said paintings insured in the name of said second party to an amount not less than Two Hundred Fifty Thousand (\$250,000) Dollars, and first party is to pay without charge to second party premiums on such insurance.

15. If at any time during the life of this contract, any or all of said paintings should be destroyed by fire or otherwise, [62] and if, for such damage or less, insurance moneys are collected in excess of \$125,000, such excess of said \$125,000 is to be divided equally between first and second parties, the intent being that all insurance policies shall be in the name of, and the loss payable to, second party; but in case of a loss, when second party has received from the insurance companies his original investment of \$125,000 that any amount in excess of said \$125,000, he is to pay half of such excess to first party to compensate them for their work and efforts prior to such fire or loss.

16. First party is hereby clothed with full power and authority to sell all of said pictures and each and every one of them as hercinbefore provided, and to assign, transfer and deliver the same on making



sale or sales and to receive and receipt for the purchase price thereof and to make all reasonable and necessary provision for their safe keeping, exhibition and insurance.

17. Unless said four notes of \$31,250 each, with accrued interest, be sooner paid by second party, first party is to apply the purchase price received on sales until said four notes of \$31,250 each, and accrued interest, are, paid in full, and when all are fully paid, then first party is to pay the balance of any moneys received, less their commissions, to second party, as hereinbefore provided.

18. First party are, at their expense and without charge to second party, to clean and fully restore all fourteen of said paintings and if necessary, re-frame any or all of them which may require it.

This clause is to be applied to any paintings which may be withdrawn by second party as well as any which may be resold by first party. [63]

19. This agreement is to be binding upon the executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties aforesaid have, the day and year first above written, executed these presents and duplicate thereof.

TOMLINSON-HUMES, INCORPORATED.

(Signed) W. Y. HUMES, (Seal)  
Its President.

(Signed) E. P. CLARK. (Seal) [64]

The deposition of said witness was read as follows:

All of the pictures were present in the rooms at the



La Fayette Hotel. Mr. Myers and Miss Myers were there. After Mr. Myers and Miss Myers left, Mr. Bennett or Mr. Bennett and Mr. Humes went about immediately to arrange to have the pictures placed in the vault of the hotel for safety.

To the best of my recollection, these pictures were shipped by us to Mr. Thurber in New York, in January or February, 1913. Mr. Thurber was there in New York. Mr. Thurber was associated with our corporation in March, 1912, at the time this contract, Defendants' Exhibit 4 was executed. Mr. Thurber had no connection with our own business other than the art department prior to this bankruptcy.

**[Deposition of H. O. Tomlinson in Behalf of Defendants.]**

The same witness, H. O. TOMLINSON, also gave, his deposition in behalf of the defendants at the taking of said deposition, and his deposition so given was read in evidence as follows:

A letter shown me marked "Defendants' Exhibit 7," dated April 10, 1912, from Tomlinson-Humes to Clark, is signed by Mr. Humes. [65]

[**Defendants' Exhibit No. 7—Letter April 10, 1912.**]

TOMLINSON-HUMES, INCORPORATED.

Capital \$100,000.00

Old Masters, Modern Paintings and Marbles.

Largest Book Brokers in the World.

Imported	Libraries
and	bought
DeLuxe	and
Editions.	sold.

Chicago Office:—431 S. Dearborn Street.

Chicago, April 10, 1912.

Mr. Eli P. Clark,

637 Consolidated Realty Bldg.,

Los Angeles, Calif.

Dear Mr. Clark:

I arrived in Chicago yesterday noon and immediately communicated with Mr. Bennett over the telephone. He had already talked to Mr. Tomlinson.

Mr. Bennett said, that he would prefer to make the trip to Buffalo next week as he was very busy this week. Inasmuch as it will take us several days to make our financial arrangements to pay Mr. Myers, it rendered it convenient for all parties to await Mr. Bennett's pleasure, and Mr. Bennett and I purpose going to Buffalo next week.

I shall take our attorney with us to see that the transfer of title is properly made, and we will use every precaution to fully protect your interests in the matter and see that you get a clear and perfect title to the paintings.

I learned on my arrival here, that Mr. Tomlinson,

during my stay in Los Angeles, had had Mr. Myers ship the paintings to Chicago, and they are here now in our possession. Mr. [66] Tomlinson had already advised Mr. Bennett of this, and we told him that we would be glad to have him come over and look at them at his convenience. We have not, of course, the original documents which Mr. Myers is under contract to deliver to us, but we will obtain them when we go to Buffalo to make payment to him of the purchase price.

We are making great plans for a successful campaign for selling these paintings for you. As soon as we can get these detailed matters adjusted, I will take Mr. Thurber with me to Huntsville to meet Mrs. Scott. We shall take pleasure in keeping both you and Mr. Bennett in close touch with the progress we make from time to time.

With kind regards and best wishes we are

Yours very truly,

TOMLINSON-HUMES, INCORPORATED

Per W. Y. C. HUMES, Pres.

WYCH/AMK.

Another letter shown me, marked Defendants' Exhibit 8, from Tomlinson-Humes, Incorporated to E. P. Clark, is signed by Mr. Humes.

**[Defendants' Exhibit No. 8—Letter, May 3, 1912.]**  
 (On letter-head of Tomlinson-Humes, Incorporated.)

Chicago, May 3, 1912.

Mr. Eli P. Clark,  
 637 Consolidated Realty Bldg.,  
 Los Angeles, Calif.

My dear Mr. Clark:

\* \* \* \* \*

[67]

We have obtained sufficient money on your paper to pay Mr. Myers, but the bankers, who took this paper, are very careful and rigid about the red tape and detail of their business. They are perfectly satisfied as to your financial standing, but they insisted upon sending two of the notes to Los Angeles merely to have you identify your signature. Therefore, two of these notes will be shown you, and all that is required is for you to say that you signed them. I am sorry that you even have to be bothered to this extent, and I am sending this letter to by special delivery so that you will receive this explanation before anyone shows you these notes. There will be no further inquiry as to your credit, as that is undoubted here, but they simply wish your signature verified by you.

We are leaving tonight for the East to make payment to Mr. Myers. We will have the transfer of the pictures made in a manner which will satisfy both Mr. Bennett and our attorney.

You may rest assured, Mr. Clark, that we are going to give all of your matters our very best atten-

tion, and we have strong hopes of speedy and satisfactory results.

Yours very truly,

TOMLINSON-HUMES, INCORPORATED,

Per *y* W. Y. C. HUMES,

Prest.

WYCH/AMK.

We received the four notes of Mr. Clark referred to in the contract, exhibit 4, prior to the trip to Buffalo. It is my recollection that the notes were attached as collateral to the Tomlinson-Humes note. I think the Tomlinson-Humes note was given for practically the face value of the two notes, so we realized \$62,500 on those. We had a part of this money with us when we went to Buffalo. Mr. Humes and Mr. McArdle accompanied me to [68] Buffalo. Mr. McArdle went as the attorney of Tomlinson-Humes. He received instructions before we started on the train. Mr. Humes made the arrangements. I knew when we started that Mr. Bennett was to come to Buffalo. We told Mr. Bennett that Mr. McArdle was going along, that there were some matters regarding the title of the paintings that we wanted Mr. McArdle to look into, and as soon as he was satisfied that everything was all right and we were in shape to close the deal, we would wire Mr. Bennett that he should come up. Mr. Bennett was wired and reached Buffalo next day after we did.

A letter shown me, marked Defendants' Exhibit 9, addressed to Eli P. Clark, is signed by Mr. Humes.

The following passage from said letter was then read in evidence:

**[Defendants' Exhibit No. 9—Letter, May 14, 1912.  
(Part of).]**

“Buffalo, N. Y., May 14, 1912.

Mr. Eli P. Clark,  
S. W. Corner 6th & Hill Sts.,  
Los Angeles, Cal.

My dear Mr. Clark:

Your favor of the 7th inst was forwarded to me here and I note contents with much interest. I evidently did not make myself clear in my former letter to you regarding the notes. We did obtain the money on the notes through Mr. Wakem the gentleman whom I first mentioned to you and he handled the notes on the former deal for us. In this deal Mr. Wakem wished to take in some associates with him and these associates were bankers. While Mr. Wakem was perfectly satisfied in regard to the authenticity of your signature, they *n* insisted out of an abundance of caution that these particular notes should be verified. It was *must* against my wishes that we had to annoy you [69] in the matter, but it was beyond my control. We did not offer your notes to anyone but Mr. Wakem.

Mr. Bennett was here with me on Saturday when we made the transfer of the pictures from Mr. Myers to us and from us to you, and he will no doubt write you fully about it. We had our Chicago attorney accompany us here and used every precaution to protect our interest and yours in the two



transfers. We had them file a certified copy of the will of Sarah Ann Myers with us showing that all her property both real and personal had been willed to her husband, Mr. Thomas Myers. We had the transfer papers signed both by Mr. Thomas Myers, as the legatee and also individually, and by his daughter Beatrice Myers who was the executrix of her mother's estate. Miss Beatrice Myers signing both as the executrix and personally.

We also had the records searched here to see if there were any claims, judgment or chattel mortgages against Mr. Myers, and our attorneys pronounce the transfers from Mr. Myers to us and from us to you perfect ones so far as the titles are concerned. \* \* \* ” [70]

The WITNESS. — (Continuing.) Defendants' Exhibit 13 shown to me is a letter signed by Mr. Humes addressed to Clark under date of February 24, 1913, in which they say that their plan is at present to show the pictures in Senator Clark's private art gallery in New York.

When in Buffalo in May, 1912, we put up at the La Fayette Hotel and were assigned to three adjoining rooms, communicating with each other. Defendants' Exhibit 2, the bill of sale from Myers to Tomlinson-Humes, Incorporated, was signed in Mr. Spaulding's office; this or a copy was given to Mr. Bennett and Tomlinson-Humes had one also. Defendants' Exhibit 3, the bill of sale from Tomlinson-Humes to Clark, I think was signed in the La Fayette Hotel after Mr. Myers and his daughter and attorney

reached the hotel. We made the exchanges with Mr. Myers and his daughter of the consideration that was to be paid there for those pictures in Mr. Spaulding's office. It might have been at the hotel. It is my recollection that everything was completed at the office of the attorney, unless it might have been the actual transfer of the papers. I am inclined to think there was some formality gone through in the hotel room before we met Mr. Bennett. Just what that was, I am not clear. Miss Myers, Mr. Myers, Mr. McArdle, Mr. Humes and myself came from the office of Mr. Spaulding to the hotel.

When the petition in bankruptcy was filed against Tomlinson-Humes, Incorporated, all business of the Art and De Luxe Sales Department stopped.

When we came to the La Fayette Hotel, we went first into one of the rooms at the end of the suite. The pictures were in the center room. We went in there first, and Mr. Bennett was waiting in the other room, and we had some formalities in there [71] that Mr. Bennett was not in on, and I am inclined to think that the papers were transferred there. Everything was prepared at Mr. Spaulding's office and the transfer of the papers was made between Mr. Myers and Tomlinson-Humes after we got over to the La Fayette Hotel, and then when we were fixed up between us, we passed into the other room and Mr. Bennett was introduced to Mr. Myers and Miss Myers and Mr. Spaulding. I believe these papers were all passed to Mr. Bennett. Mr. Myers went over each one of those pictures and identified them to Mr.

Bennett. The pictures were transferred right there to Mr. Bennett.

Plaintiff here moved to strike out the last statement of the witness as a conclusion, which motion was denied by the court.

The WITNESS. — (Continuing.) When Mr. Myers and the rest of us came into the room where Mr. Bennett was, they were introduced, and Mr. McArdle said, "Now Mr. Myers I want you to go over these paintings and identify them to Mr. Bennett." Mr. Bennett had been introduced as a representative of Mr. Clark in the purchase, and Mr. Myers with a good deal of ceremony went over each picture one by one, saying "This Mr. Bennett is so and so," and so right through the list. Mr. Bennett set about arranging for the storing of the paintings that night. I think that the room that the pictures were in at the time was my room. I surrendered it shortly after this and left in an hour or two to come to Chicago.

Q. Do you know to whom that room was assigned when you surrendered it?

Objected to by plaintiff as a leading question, and objection overruled by the court.

A. I think Mr. Bennett took that room. [72]

WITNESS.—(Continuing.) When I left, the pictures were in the room and that room was turned over to Bennett.

**[Deposition of Seymour J. Thurber.]**

The deposition of SEYMOUR J. THURBER, was read in evidence by the plaintiff as follows:

I was a salesman in the art department of Tomlinson-Humes about two years previous to the bank-

(Deposition of Seymour J. Thurber.)

ruptcy. I was in their employ in January, 1913. I first saw the Hogarth pictures at the Ehrich Art Galleries in New York. I think it was in the summer previous to the winter we went out to the coast and concluded the sale of the paintings to E. P. Clark. I then said they were genuine pictures and wanted Tomlinson-Humes to buy them. We found out who the owner was and went to Thomas Myers and began negotiations to secure an option. After an option was obtained the pictures were taken to Chicago and put in the hands of our restorer under my directions. We then went to the coast to Los Angeles and sold them to Mr. E. P. Clark.

After the pictures were reframed, they were exhibited privately in the art rooms of the bankrupt. They were not directly offered for sale. When they were sold to Mr. Clark they were finally sold to him. They were not shipped to Los Angeles. I was present at the negotiations with Mr. Clark. The contract was signed in Mr. Clark's office, in Los Angeles, California, and his contract he kept, and the other contract Mr. Humes took with him back to Chicago. We arranged to go down to Buffalo to see Mr. Myers to conclude the option which had been obtained previous to our going to the coast. I don't know where the Myers' option is. The pictures were shipped to Chicago after the option was concluded. Tomlinson-Humes were authorized to sell them under the terms of the option.

When I returned from Los Angeles the pictures were still in Chicago. They were afterwards, about

(Deposition of Seymour J. Thurber.)

October, 1912, shipped to [73] Akron, Ohio, and offered for sale, and then shipped back to Chicago in December. The next shipment was to New York, about the first of March, 1913. I think that they were delivered to Senator Clark's residence, 77th and Fifth Avenue, and then unpacked by me personally and taken upstairs by me and placed in one of Senator Clark's art galleries. About two weeks after that, which would be sometime in April, possibly around the first of April, they were taken down out of the art gallery and repacked by me in their cases in which they had originally been shipped. I asked Mr. Rowcroft, who was superintendent of Mr Clark's residence, if I could leave them there for further shipping directions, and he said that would be all right as far as he was concerned. I showed the pictures to Senator Clark and tried to sell them to him. I took the pictures downstairs and repacked them. I did not get them back after that. I wrote Mr. Rowcroft to deliver these pictures on my written order only. I think a copy of that letter is in the files of Tomlinson-Humes, Incorporated.

Q. Did you subsequently at any time authorize, or did Tomlinson-Humes Company to your knowledge authorize, the removal of these pictures from the residence of Senator Clark?     A. No, sir.

Q. Now referring to the time when you say these pictures were received from Ehrich, New York, in March, 1912, did these pictures remain continuously in the possession of the bankrupt up to the time that they were moved from the residence of Senator



(Deposition of Seymour J. Thurber.)

Clark. A. Yes, sir. [74]

WITNESS.—(Continuing.) At Mr. Bennett's request, at his office, and in the presence of my attorney, Mr. Samuel B. Hill, I wrote a letter ordering the pictures to be shipped, but on the advice of Mr. Hill I did not sign or send the letter.

On cross-examination witness further testified:

I saw the document which I called an option obtained from Mr. Myers whenever I wanted to. When I wanted to see it I asked Mr. Humes for it and he got it out of the Tomlinson-Humes files. When it was in Chicago it was kept in the safe of the corporation. The last time I saw it that I recall was in Akron, Ohio, in December, 1912. I was not with those pictures during all of the period from the time in March that they were shipped from the Ehrich Galleries, up to the time that they were removed from the residence of Senator Clark. I was with them the greater part of that time; I cannot give you the dates. I know where the pictures were from March, 1912, until they were removed from Senator Clark's residence, because I was in constant touch with the affairs of the company during that period. I cannot answer positively where they were on the 11th of May. I never saw them in Buffalo. The first time that I visited Senator Clark's residence in relation to those Hogarth pictures was about the first of April, 1913, when I went there to unpack them. Shortly after that I took them off the walls and re-packed them. They were not on the walls of Senator Clark's art rooms at any time. They were in the



(Deposition of Seymour J. Thurber.)

gallery on chairs and on the floor. I think they were there about three days. They were delivered at Senator Clark's about a day before I unpacked them.

I do not know whether I have copies of any of the letters I wrote to Mr. Rowcroft. Some of them I mailed myself, I don't know how many. Those that were written in the office I did not [75] mail. I suppose there were one or two of those. I don't know their dates. I wrote to Mr. Rowcroft demanding the pictures from him. I am one of the petitioners in bankruptcy for the adjudication of Tomlinson-Humes, Incorporated, as a bankrupt.

On redirect examination, the witness testified:

That option from Mr. Myers authorized the bankrupt to make a conveyance of these pictures, if sold.

**[Deposition of Michael Gesas.]**

The deposition of MICHAEL GESAS taken by stipulation of the parties was read in evidence by the plaintiff as follows:

I am one of the attorneys for the plaintiff in these proceedings. On September 19, 1913, I called at Senator Clark's home, and met Mr. Rowcroft. Mr. McKey, the plaintiff, was with me at that time. I stated to Mr. Rowcroft that Mr. McKey was trustee in bankruptcy in the matter of Tomlinson-Humes, Incorporated, and produced certified copy of the approval of Mr. McKey's bond by the Court, and said, in behalf of Mr. McKey, "I demand that the Hogarth paintings which were delivered here by Mr. Thurber be turned over to Mr. McKey forthwith, as trustee in bankruptcy in the Tomlinson-Humes

(Deposition of Michael Gesas.)

matter.” Mr. Rowcroft said that on September 11, 1913, he had received instructions from Mr. Anderson, Senator Clark’s secretary, that the pictures were to be given to E. P. Clark, Sixth and Hill Streets, Los Angeles, California, and in pursuance of that direction he shipped the pictures by the American Express Company.

I then had a talk with Mr. Anderson and repeated to him the fact that I represented Mr. McKey, the trustee, and introduced Mr. McKey to him and made formal demand on him for the return of the pictures. He stated he had received a letter purporting to be signed by Mr. Thurber—did not know Mr. Thurber’s [76] signature, and he said when he received the letter he thought it was genuine and instructed Mr. Rowcroft to ship the pictures to Eli P. Clark, at Sixth and Hill Streets, Los Angeles, California.

I saw the letters referred to by Mr. Rowcroft. The name of Seymour J. Thurber, or S. J. Thurber, was subscribed to it. I have seen Mr. Thurber’s signature several times. Making a comparative analysis of both signatures I would say the signature to that letter was not the signature of Mr. Thurber.

**[Deposition of Harry L. English.]**

The deposition of HARRY L. ENGLISH, taken by stipulation in behalf of the plaintiff, was read by the plaintiff as follows:

I was in the employ of Tomlinson-Humes at the time of the bankruptcy. I started in May, 1912. I first saw the Hogarths in their place of business the first day I went there. In a short time we packed

(Deposition of Harry L. English.)

them and shipped them to Buffalo. They were returned from Buffalo, and in a few days I started the restoration and framing of them. It took a long time. Then I packed them again and shipped them to Akron, Ohio. They were down there two or three months. I went down there and packed them and expressed them back to Chicago. They then remained in our possession quite a while. The next shipment was to New York. I expressed them there to S. J. Thurber, care of the American Express Company.

I can fix the date of my first employment with Tomlinson-Humes as May 1, 1912. The Hogarths then were just on stretchers with no frames and were quite dirty. Nothing had been done to them before they were shipped to Buffalo in the way of cleaning, repairing, reframing or anything of that kind. [77]

**[Deposition of Henry C. Bennett.]**

The deposition of HENRY C. BENNETT, taken at Chicago, Illinois, in behalf of the defendants by stipulation of the parties, was read in evidence by the plaintiff:

I reside at Evanston, Illinois. Eli P. Clark is my uncle. I have represented him in deals for paintings with the firm of Tomlinson-Humes & Company in two deals. I first learned about the Myers collection by letters from Mr. Clark. Tomlinson-Humes said they were arranging for the negotiations of some notes with which to raise the money necessary to purchase these paintings from Mr. Myers, and as soon as they were ready they would let me know. I

(Deposition of Henry C. Bennett.)

received a telegram from them to come on to Buffalo. I reached there Saturday morning, May 11th. I went immediately to the Hotel La Fayette and asked them if they were ready for me, and they said no, they had some matters to fix up with Mr. Myers' attorney and did not know just what hour they would be ready. Later in the day they advised me that they would be ready about one o'clock.

They occupied three connecting rooms with open doors. The pictures were scattered around the room there, the middle room. They were all the pictures involved in the transaction, including the Hogarths. At one o'clock I met Mr. Myers and his daughter and was introduced to them as Mr. Clark's representative who was purchasing these pictures. Mr. Myers' attorney, Mr. Spaulding, was there at the time, also Mr. Humes, Mr. Tomlinson and Mr. McArdle. As soon as I was introduced to Mr. Myers I asked him to identify these paintings to me, and he went around to each one of them, told me what they were and told me something of their history. After that the deeds and papers, title papers, were all turned over and I took possession of them. This was done in the same room with the pictures, all right there together. [78]

Prior to the papers being turned over, Mr. Myers, Miss Myers and their attorney, Mr. Humes, Mr. Tomlinson and Mr. McArdle returned to one of the other rooms of that suite; then they all came in to the room together with Mr. McArdle and the papers were turned over to me. The papers turned over to

(Deposition of Henry C. Bennett.)

me were Defendants' Exhibits 2, 3, 15, 16 and 17. At that time I said I wanted to make some arrangements for storing the paintings that evening, and went down to the clerk's office, Mr. Tomlinson and Mr. Humes were with me. We arranged to store the paintings in the vault of the hotel.

After I returned from the clerk's office, Mr. Tomlinson advised me that he and Mr. McArdle were going back to Chicago that evening, and I stated that I was going to leave early Sunday morning, and I would turn the paintings over at that time and I wanted a receipt for them, for the paintings. A receipt was then drawn on the bottom of the bill of sale to Mr. Clark and signed. That receipt appears on the bottom of Defendants' Exhibit 3.

When I went to the clerk's office I took the room occupied by Mr. Tomlinson, the middle room, for myself. The pictures were in that room.

I know a man named Rowcroft in New York. The document shown me marked Defendants' Exhibit 18 is a letter which I received from him. It is as follows:

**[Defendants' Exhibit No. 18, September 11, 1913.]**

“Residence of W. A. Clark,

New York, September 11th, 1913.

Mr. H. C. Bennett,

c/o Mead & Coe,

69 Washington Street, Chicago. [79]

Dear Sir:

I am forwarding via the American Express to-day three cases that were packed by your Mr. Thurber



(Deposition of Henry C. Bennett.)

to Mr. Eli P. Clark, corner 6th and Hill Sts., Los Angeles, Cal. I trust they will arrive there safe and thank you for giving me the information where to send them.

Very truly yours,

W. M. ROWCROFT,"

Prior to receiving that letter I had made a communication with Mr. Rowcroft in writing.

I know Mr. Thurber and have known him two or three years. He told me, about April or May, 1913, that the pictures had been taken to Mr. Clark's residence for the purpose of exhibiting them to him in order to make a sale, and they were left in charge of the superintendent of his gallery, Mr. Rowcroft; that he, Thurber, said to Rowcroft that those pictures belonged to Mr. E. P. Clark of California.

About two weeks before I wrote to Mr. Rowcroft this letter of the 8th of September, Thurber made another statement to me on that subject.

#### Cross-examination.

Mr. Rowcroft was acting for Senator Clark in relation to these pictures. I did not deal with anybody else in New York acting for Senator Clark. After these pictures were received by Mr. Rowcroft for Senator Clark, I did not have any written communication with Mr. Rowcroft or Senator Clark or any one else representing Senator Clark other than the letters which I have identified here. [80]

#### [Depositions of Frank McKey.]

Thereupon the deposition of FRANK McKEY, taken in behalf of defendant at Chicago, Illinois, was read as follows:



(Deposition of Frank McKey.)

I am the plaintiff. I never at any time authorized, directed or consented to or empowered anyone in my behalf to authorize, direct and consent to the delivery of the Hogarth pictures described in this action, to Eli P. Clark or anyone else.

Thereupon the deposition of the same witness, taken in behalf of the plaintiff was read as follows:

I first learned that these Hogarth pictures had passed out of the possession of Senator Clark or his agents, when I was in New York in the latter part of September, 1913. We made a demand for the pictures from Senator Clark's housekeeper and he claimed they had been shipped to Mr. Clark in California. Rowcroft was the housekeeper and he told me he had boxed up the pictures and sent them by express to E. P. Clark. I made a demand on him the night I saw him in the basement of the Clark house.

**[Deposition of Edward J. McArdle.]**

The deposition of EDWARD J. McARDLE, taken at Chicago, was then read in evidence at follows:

Mr. Hume came to my office in the law suite of McArdle & McArdle, and asked me if I could accompany himself and Mr. Tomlinson to Buffalo to assist in closing an art transaction. He said to me, "Last March I made a contract with my friend Mr. Clark, of whom you have heard, in Los Angeles, and we are going down to Buffalo to complete that transaction and I wish you to represent us as well as to see that Mr. Clark's interests are fully protected. Mr. Clark expects us to do this for him,

(Deposition of Edward J. McArdle.)

for I have so told him." I then asked him what the nature of the transaction was, and he said that was the matter that he wanted to call my attention to [81] particularly, but he would give me all the facts. He showed me Defendants' Exhibit 4, and called my attention to the clause on page 3 of it: "It is further understood that if first party can obtain any consideration by way of commission or reduction in price from said quoted option price from the said Thomas Myers, they are to have the same as compensation for their work in bringing the matter to the attention of second party and of disposing of them for Mr. Myers." He said in view of that clause we do not wish that Mr. Myers know that we have a purchaser for the art works mentioned in this contract with Mr. Clark, and particularly I do not wish that there should be a transfer direct from Mr. Myers to Mr. Clark. We believe we can obtain from Mr. Myers a substantial concession from the price quoted in this option contract that I showed you.

I had already read the contract, Defendants' Exhibit 4, and I thereupon took the option contract which he showed me and read it. That contract said that it authorized Tomlinson-Humes, Incorporated, to sell those *picuters*, and I believe that it also stated that Tomlinson-Humes, Incorporated, had the right to purchase the pictures at the prices quoted, which prices I do not now remember. He asked me how the transaction could be carried out so as to vest the title absolutely in Mr. Clark without disclosing to Mr. Myers the name of Mr. Clark. I said the only

(Deposition of Edward J. McArdle.)

way that that could be done was to have Mr. Myers, after he had fixed the terms of his deal with them, make a bill of sale, and Tomlinson-Humes execute a similar bill of sale to Mr. Clark, and make delivery of it. He told me in this same interview that Mr. Bennett would be on to represent Mr. Clark in the closing of the deal and that there was one thing particularly that Mr. Clark desired, and that was [82] that Mr. Bennett should be present and Mr. Myers should identify all of those paintings.

Mr. Humes, Mr. Tomlinson and I went to Buffalo, putting up at the La Fayette Hotel, occupying each a room in a series of three, the middle room, looking out through the windows, was occupied by Mr. Tomlinson, the one to the left by me and the one to the right by Mr. Humes. My room was nearest the elevator. After arriving in Buffalo, we met Mr. Myers and his daughter at the office of his attorney, Mr. Spaulding. Then we took up the question of obtaining by Tomlinson-Humes, Incorporated, a reduction in price named in the contract between Mr. Myers and Tomlinson-Humes, Incorporated. When that was done I investigated the title as shown by the papers they produced. Amongst them were Defendants' Exhibits 15, 16 and 17. Those negotiations covered two or three interviews. I believe we made a couple of visits to our rooms and I found on one of the earlier visits that fourteen pictures had been placed in the middle room occupied by Mr. Tomlinson.

We were in Buffalo a day before the papers were

(Deposition of Edward J. McArdle.)

finally executed, sometime during the forenoon of the day after we arrived there, and on the same day the papers were signed Mr. Bennett came to the rooms. I was introduced to him, or he to me, as Mr. Clark's nephew or representative. Mr. Humes said that Mr. Clark understood that he was to have me for his attorney to look after Mr. Clark's interest, and that he was desirous to have Mr. Bennett present when Mr. Myers would identify those pictures. It was then stated that it would be arranged that Mr. and Miss Myers and their attorney would come to the hotel, identify the pictures and the deal would be closed right then and there, and [83] the pictures turned over and the possession given to Mr. Bennett for Mr. Clark.

We then went to Mr. Spaulding's office again; where eventually Tomlinson-Humes, the two Myers and Mr. Spaulding had arranged the question of price and other details and papers were drawn up, amongst them Defendants' Exhibit 2. The question then came up as to how the property should be placed in Mr. Clark, and we had drawn up Defendants' Exhibit 3. I believe there were some other papers drawn up. Exhibit 17 was produced at the time, and Exhibits 15 and 16 were prepared while these negotiations were going on. When everything was ready, an appointment was made by which the parties were to meet in Mr. Humes' room. We came over from the office; by arrangement Mr. Bennett was there. Mr. Myers and Miss Myers were introduced to Mr. Bennett, and I think it was after

(Deposition of Edward J. McArdle.)

we entered Mr. Humes' room in the suite that Mr. Myers identified those pictures to Mr. Bennett. About this I am not sure. Mr. Myers, Miss Myers, Mr. Tomlinson and myself entered Mr. Humes' room and Mr. Humes turned over to Mr. Myers and his daughter and attorney, the money and notes. Mr. Myers, his attorney and daughter turned over Defendants' Exhibits 2, 15, 16 and 17. Possibly there were some other papers. To these were then attached Defendants' Exhibit 3, which had already been signed by Mr. Humes, and we left the room. Mr. Bennett was in the adjoining room where the pictures were. Mr. Myers identified them to him, going to one after another, stating where he got them and giving a short history of each picture; then these papers, Defendants' Exhibits 2, 3, 15, 16 and 17 were delivered to Mr. Bennett.

Mr. Bennett was told by either Mr. Humes or myself, there were the pictures now, for him to take possession of, that they were his. [84]

Then the Myers and their attorney left, and a discussion arose between Mr. Humes and Mr. Bennett and Mr. Tomlinson about the protection of those pictures over night. We all left the room, Tomlinson and myself to surrender our rooms and get our transportation for home that night, and Mr. Humes and Mr. Bennett to arrange for the pictures. When we returned I learned that Mr. Tomlinson had surrendered his room just as I had, and Mr. Bennett was assigned to Mr. Tomlinson's room where these pictures were located. I then sat down and after



(Deposition of Edward J. McArdle.)

the witness clause I wrote upon it this receipt, which now appears on it, on Defendants' Exhibit 3. When I had completed my writing Mr. Humes signed in the place where it now appears. We were then right in the room with the pictures. This took place on the afternoon of the 11th, and Mr. Tomlinson and myself left and came home.

**[Deposition of James H. Anderson.]**

Thereupon the deposition of JAMES H. ANDERSON, taken in New York, was read in evidence as follows:

I have been secretary to Senator William A. Clark fourteen years. Have charge of his correspondence and in charge of his office in New York. In 1913 W. H. Rowcroft was in charge of the Senator's mansion in New York. A letter produced by me is a copy of the letter written by Senator Clark to Professor Chattain under date of February 26, 1913. Said letter is as follows: [85]

**[Exhibit—Letter, February 26, 1913, W. A. Clark to A. Chattain.]**

“Butte, Montana, February 26th, 1913.

Professor A. Chattain,

629 Woodland Park, near 35th Street,  
Chicago, Illinois.

Dear Sir:

I am in receipt of your valued favor of the 21st instant from New York and note what you say about the pictures by Hogarth and that Mr. Turner has a letter of introduction to me from Mr. E. P. Clark of



Los Angeles, owner of the same. I note your suggestions.

I expect to leave to-night for New York and will take a look at these at the earliest opportunity.

Yours sincerely,

W. A. CLARK."

I cannot identify the letter I showed to Mr. Gesas or Mr. McKey when they visited me. I did not make a note of it at the time. I did show them a telegram from Mr. Clark of Los Angeles, which said telegram is produced by me and dated September 11th, 1913.

Plaintiff objected to this telegram as being subsequent to the adjudication in bankruptcy.

[**Exhibit—Telegram, September 10, 1913, E. P. Clark to Senator W. A. Clark.**]

“Form 2589 B  
FX

Western Union Day Letter.

Theo. N. Vail, President, N 520.

Received at the Western Union Building, 195 Broadway, N. Y. [86]

Sept. 10, 1913.

Y 3454 CH DNM 50 BLUE Received 367

Sep 11 1913 550

Ans. 1394

5432

Senator Wm A. Clark

20 Ex. Place.

New York.

Dear Senator Will you please instruct Mr. Row-

croft to comply with Mr. H. C. Bennets request to have the twelve Hogarth paintings now in your gallery properly packed and expressed to me as they belong to me. Mr. Bennet is my nephew. Whatever the expense is will send my draft.

E. P. CLARK. 511 P. M.

Witness also produced and identified a letter from H. C. Bennett to W. H. Rowcroft, dated September 8th, 1913, which letter is as follows:

[**Exhibit—Letter, September 8, 1913, H. T. Bennett to W. H. Rowcroft.**]

“Chicago, September 8th, 1913.

Mr. W. H. Rowcroft,  
c/o Sen. W. A. Clark,  
77th & 5th Ave.,  
New York, N. Y.

Dear Sir:

Sometime ago, Mr. Seymour J. Thurber of Chicago placed in your care, a series of twelve paintings by William Hogarth belonging to Mr. Eli P. Clark, Los Angeles, Cal. Mr. Thurber advises me that you are desirous of being relieved of further care of these paintings and would like to have them removed. [87] I am a nephew of Mr. Clark and his personal representative in this matter with Mr. Thurber and would consider it a favor if you would forward the paintings by express, charges collect, to his Los Angeles address which is as follows:

Mr. Eli P. CLARK,  
Corner 6th & Hill Sts.,  
Los Angeles, Cal.

Mr. Thurber tells me they are all boxed and ready

for shipment, so that they could be forwarded without delay. Would be pleased to have you advise me as soon as shipment is made.

Thanking you for your attention in this matter, I remain,

Very truly yours,  
HENRY C. BENNETT."

And also a letter from W. H. Rowcroft to H. C. Bennet dated September 11, 1913, which letter is as follows:

**[Exhibit—Letter, September 11, 1913, W. H. Rowcroft to H. C. Bennett.]**

“Residence of W. A. Clark,  
New York, September 11th, 1913.

Mr. H. C. Bennett,  
e/o Mead & Coe,  
69 Washington Street, Chicago.

Dear Sir:

I am forwarding via the American Express to-day three cases that were packed by your Mr. Thurber to Mr. Eli P. Clark, Corner 6th & Hill Sts., Los Angeles, Cal. I trust they will arrive there safe and thank you for giving me the information where to send them.

Very truly yours  
W. H. ROWCROFT." [88]

**[Deposition of Walter H. Rowcroft in Behalf of Defendant.]**

Thereupon the deposition of WALTER H. ROWCROFT, in behalf of the defendants, was read in evidence as follows:

I am superintendent of Senator Clark's residence

(Deposition of Walter H. Rowcroft.)

in New York. I take care of the power plant and a certain percentage of the employees. I have known Seymour J. Thurber a little over a year; met him in February, 1913. He came in one morning and said he was bringing in three cases of pictures, and wanted to know if he could see the Senator. I sent him the message and the Senator said he would see him. The pictures were unpacked in the basement. He saw the Senator after they were unpacked. There were twelve Hogarth pictures. I brought the Senator into the gallery and introduced him to Mr. Thurber. The Senator looked them over and said he did not like them. Mr. Thurber started to explain the pictures and Mr. Clark said he did not wish to spend any time on them, as he had no room and did not care for them. Then they looked at some other pictures belonging to Mr. Clark, and Mr. Clark said he was in a hurry to get down to his office, and Mr. Thurber again brought up the subject of the pictures and told Mr. Clark that they belonged to Eli P. Clark of Los Angeles, and Mr. Clark said, "Oh, yes, I know it." He was about to bid Mr. Thurber good-bye when Mr. Thurber asked him if it would be too much to have the pictures left there for a little while as he had someone else in New York he wished to show them to, and Mr. Clark turned to me and addressed Mr. Thurber and said, "You arrange with Mr. Rowcroft, it will be agreeable to me."

At the time I received the letter from Mr. Bennett dated September 8th, 1913, the three boxes were

(Deposition of Walter H. Rowcroft.)

where Mr. Thurber left them in the basement. After getting that letter from Mr. Bennett [89] I answered the letter. I did not keep the Hogarths. It says that they were shipped to Mr. Eli P. Clark at Los Angeles, California. Between the time I received Mr. Bennett's letter and the time I shipped those boxes, I had a communication with Mr. St. Clair in Senator Clark's office. He told me that he had received a telegram from Mr. Eli P. Clark of Los Angeles, California, about some paintings and asked me what I knew about it, and I told him that I had also received a letter from Mr. Bennett who claimed to be a nephew of Eli P. Clark, asking to have the pictures shipped to his uncle, and Mr. St. Clair and I spoke of the shipping of it, and he asked me if I had ever heard of Eli P. Clark, and I said yes, that the Senator himself knew the gentleman as far as I knew, as they had been speaking about him in the gallery the day Mr. Thurber came there. He said, "Well, ship them as long as you are anxious to get them out of the way."

**[Deposition of W. Y. C. Humes.]**

The deposition of W. Y. C. Humes was then read in evidence as follows:

I am forty-six years of age. Was in the publishing and art business in 1911, 12 and 13, in Chicago, in the corporation known as Tomlinson-Humes, Incorporated. I was president and gave my attention to all the business, but more especially to the art works and high priced books. I know Thomas Myers and Eli P. Clark; have known him since 1910.



(Deposition of W. Y. C. Humes.)

We received a letter from Thomas Myers in December, 1911, in which he says, "Trusting that your Los Angeles man turns up trumps." Prior to the receipt of that letter I had had a talk with Mr. Myers about a Los Angeles man. I probably had several talks with him, but particularly I remember we had a patron in [90] Los Angeles, California, to whom I hoped to sell the collection of paintings on which we had an option from Mr. Myers. It was Mr. E. P. Clark, the defendant in this suit. We had other people in mind in Los Angeles besides Mr. Clark, and I could have mentioned others to Mr. Myers as well as Mr. Clark.

The document marked Defendants' Exhibit 4, which is now shown to me bears the signature of the corporation of Tomlinson-Humes, Incorporated, signed by me as its president. The option to which I have just referred is the same option which is referred to on the first page of this exhibit. That option was in writing. It was signed probably in December, 1911, or January or February, 1912. This is the option from Myers to Tomlinson-Humes. It was executed in duplicate, one copy was given to Mr. Thomas Myers and one retained by myself. I do not know where either of them is now. The one which was given to Mr. Myers when we collected the pictures from Mr. Myers was turned back to us to be destroyed. I don't recall the actual fact of this physical destruction, but I assumed it was. I do not know what became of the one that belonged to Tomlinson-Humes, Incorporated. There were



(Deposition of W. Y. C. Humes.)

papers and all sorts of things belonging to this transaction in the hands of the corporation when the receiver took charge.

\* The documents now shown to me, being Defendants' Exhibits 2, 3, 15, 16 and 17, were received by you (Mr. McArdle, who was interrogating the witness), and turned over to Mr. Bennett by you. The turning over to Mr. Bennett was done in a room at the La Fayette Hotel in Buffalo, New York. The bill of sale from Tomlinson-Humes to Clark was given by me to Mr. Bennett with the other papers. At the time that paper was turned over to Mr. [91] Bennett, twelve of the pictures were in Buffalo. I don't know whether the other two were there or not. They were in a room in the La Fayette Hotel. We had three rooms connected with each other. The writing below the bill of sale was written by Mr. McArdle and was placed there after the paper was originally handed to Bennett. I signed it for the corporation. After the signing of that paper the pictures passed from Mr. Bennett's hands, as agent for Mr. Clark, to our hands as agent for Mr. Clark.

I know Professor Chattain. I have known him since 1909 or 1910. I told him that we wanted to arrange so that we could present these pictures to Senator Clark. I told him when we wrote that I wanted him to be perfectly frank with Senator Clark and to let Senator Clark know that Eli P. Clark was the owner of the pictures.

I have known Seymour J. Thurber since 1909 or 10. After that he became regularly employed and

(Deposition of W. Y. C. Humes.)

connected with our organization. At the time the Hograth pictures were exhibited at Senator Clark's mansion Thurber and I were stopping at the same hotel in New York City. Thurber was instructed by me to take them up there and exhibit them. Then I told him he had best tell Senator Clark's secretary and also Senator Clark that the pictures which we wanted to exhibit to him belonged to Eli P. Clark of Los Angeles. Mr. Thurber reported to me that he had arranged to leave the pictures indefinitely at Senator Clark's gallery. I instructed him to get a receipt from Senator Clark or the superintendent of his galleries for the paintings.

The petition in bankruptcy against our corporation was filed about the middle of July. Upon the filing of that petition, the assets and property, all the property of the corporation, was turned over to the trustee. [92]

On cross-examination, the witness further testified:

The receipt written upon the second page of Defendants' Exhibit 3 was written about half an hour after the delivery of the instrument itself. During that time the parties were still in the same locality. The parties did not separate after the delivery of the first contract, but continued together until the receipt was made. Mr. Thurber was acting in New York under my direction, or should have been. Specific directions to him would be derived from me as an officer of Tomlinson-Humes, but Mr. Thurber was operating under a written contract

(Deposition of W. Y. C. Humes.)

with our company that directed his movements and controlled his responsibility. That contract concerned his duties and retainer. It was a very elaborate contract.

Witness further examined by counsel for defendants: I told Mr. McArdle I wanted the transfer to be properly made to Mr. Clark, but not as his attorney. I also told Mr. McArdle that I had written to Mr. Clark telling him we were bringing our attorney on to Buffalo for the purpose of seeing that the title was properly transferred from Mr. Myers. I made practically the same statement to Mr. Bennett. I told Mr. McArdle when introducing him to Mr. Bennett in Buffalo that I brought him (Mr. McArdle) on for the purpose of seeing that the transfer was properly made.

Thereupon the plaintiff rested.

**[Testimony of Eli P. Clark, in Behalf of Defendants.]**

ELI P. CLARK, being called and sworn in behalf of the defendants, testified as follows:

Referring to the four promissory notes that appear in the evidence were given by me to Tomlinson-Humes, Incorporated, in amount \$31,250 each falling due January 28, 1913, July 28, 1913, January 28, 1914, and July 28, 1914, I paid the first one prior to the adjudication, I have since paid all of them. [93]

I had no information March 28, 1912, nor May 11th, nor at any time during May, that Tomlinson-Humes Company were bankrupt or insolvent. I be-

(Testimony of Eli P. Clark.)

lieved they were not. Nor did I at any of these times have any intention to delay, defeat or defraud the creditors of Tomlinson-Humes, or assist them in delaying, defeating or defrauding their creditors, nor did I have any information or belief of any intent on their part to defeat or defraud their creditors.

Thereupon the defendants rested.

**[Stipulation for Settlement of Statement on Appeal.]**

It is stipulated that the foregoing be settled, certified and allowed as the statement on appeal herein. Sept. 27, 1915.

MULFORD & DRYER,  
WILBUR BASSETT,  
Solicitors for Complainant.  
HERBERT J. GOUDGE,  
HARTLEY SHAW,  
Solicitors for Defendants.

**[Order Settling Statement on Appeal.]**

Whereupon the foregoing is settled, certified and allowed as the statement on appeal herein.

Dated October 4th, 1915.

OSCAR A. TRIPPET,  
Judge.

[Endorsed]: No. A-101—Equity. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee, etc., vs. Eli P. Clark, et al. Statement on Appeal. Filed Oct. 4, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Mul-

ford & Dryer & Wilbur Bassett, Suite 615 I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Plaintiff. [94]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

A-101.

FRANK M. McKEY, Trustee in Bankruptcy, of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Petition on Appeal.**

To the Honorable OSCAR A. TRIPPET, District  
Judge:

The above-named complainant, Frank M. McKey, trustee in bankruptcy of the estate of Tomlinson-Humes, Incorporated, bankrupt, conceiving himself aggrieved by the order and decree made and entered by the above-named Court in the above-entitled cause, under 5 day of August, 1915.

Wherein and whereby, among other things, it was and is ordered that the bill of complaint herein be dismissed, and that the defendants recover their costs herein, defendants hereby appeal to the United States Circuit Court of Appeals for the Ninth Cir-



cuit from said order and decree and of all the said order and decree for the reasons set forth in the assignment of errors which is filed herewith, and,

Prays that this, his petition for the said appeal, may be allowed, and that the transcript of the records, proceedings [95] and papers upon which said order was made and of the statement on appeal herein duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WILBUR BASSETT,  
MULFORD & DRYER,  
Solicitors for Complainant.

Dated September 7, 1915, in said term.

[Endorsed]: Original. No. A-101. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy, etc., Complainant, vs. Eli P. Clark et al., Respondent. Petition for Appeal. Received copy of within this 7th day of Sept., 1915. Goudge, Williams, Chandler & Hughes, Attorneys for Respondents. Filed Sep. 7, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Mulford & Dryer & Wilbur Bassett, Suite 615 I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Complainant. [96]



*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

A-101.

FRANK M. McKEY, Trustee in Bankruptcy, of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Assignment of Errors.**

Comes now the complainant, Frank M. McKey, trustee, and files the following assignment of errors on which he will rely upon his appeal from the decree made by this Honorable Court on the 5th day of August, 1915, in the above-entitled cause.

I.

That the said United States District Court for the Southern District of California, Southern Division, erred in dismissing the said suit and entering a final decree therein in favor of the said respondents for their costs against said complainant.

II.

[97]

That the said Court erred in not making, rendering and entering a decree in favor of the said complainant and against the said defendants for the pos-

session of the paintings described in the bill of complaint herein.

[Endorsed]: Original. No. A-101. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy, etc., Complainant, vs. Eli P. Clark, et al., Respondents. Assignment of Errors. Received copy of within this 7th day of Sept., 1915. Goudge, Williams, Chandler & Hughes, Attorneys for Respondents. Filed Sep. 7, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Mulford & Dryer & Wilbur Bassett, Suite 615 I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Complainant. [98]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

FRANK M. McKEY, Trustee in Bankruptcy, of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Order Allowing Appeal.**

Upon motion of Wilbur Bassett, Esq., solicitor for complainant, and upon reading the petition of complainant for an order allowing appeal, together with

an assignment of errors, it is ordered that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made, entered and filed herein on the 5th day of August, 1915; and that a transcript of the record herein be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that the bond on appeal be fixed at the sum of Two Hundred Fifty and no/100 Dollars (\$250), and that the injunction heretofore entered herein restraining the respondents be and the same is hereby restored and continued in force during the pendency of said appeal or until further order herein. [99]

Los Angeles, California.

In open court, October 4, 1915.

OSCAR A. TRIPPET,  
District Judge.

[Endorsed]: Original. No. A-101—Equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy of Tomlinson-Humes, Incorporated, Bankrupt, Complainant, vs. Eli P. Clark, Los Angeles Warehouse Company, a Corporation, Respondents. Order Allowing Appeal. Filed Oct. 4, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Wilbur Bassett, Attorney at Law, 333 Van Nuys Building, Los Angeles, Cal. [100]

*In the District Court of the United States, in and  
for the Southern District of California, Southern  
Division.*

FRANK M. McKEY, Trustee in Bankruptcy, of  
TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

**Bond on Appeal.**

Respondents.

KNOW ALL MEN BY THESE PRESENTS:  
That we, the Fidelity & Deposit Company of Mary-  
land, a corporation, are held and firmly bound unto  
Eli P. Clark and Los Angeles Warehouse Company,  
defendants herein, in the full and just sum of Two  
Hundred fifty and no/100 Dollars (\$250), to be paid  
to said defendants, their attorneys, executors, ad-  
ministrators or assigns, to which payment well and  
truly to be made we bind ourselves firmly by these  
presents.

WHEREAS lately at a session of the District  
Court of the United States, in and for the Southern  
District of California, Southern Division, in a suit  
pending in said court between the [101] said  
Frank M. McKey, trustee of the estate of Tomlinson-  
Humes, Incorporated, bankrupt, complainants and  
Eli P. Clark and Los Angeles Warehouse Company,

respondents, a decree was rendered dismissing the bill of the said complaint against said defendants and the said Frank M. McKey, trustee, having obtained from said Court any order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree hereinbefore mentioned, and, whereas a citation directed to the said respondents is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California,

NOW the condition of the above obligation is such that if the said Frank M. McKey, trustee, shall prosecute his appeal to effect and shall answer all damages and costs that may be awarded against him, if he fail to make his appeal good, then the above obligation is to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF the corporate seal and name of said surety is hereby affixed and attested by its duly authorized officers at Los Angeles, California, this 11th day of October, 1915.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND.

By HARRY D. VANDEVEER,  
Attorney in Fact.

(Seal) Attest: J. HOMER NISHWITZ,  
Agent. [102]

State of California,  
County of Los Angeles,—ss.

On this 11th day of October, 1915, before me, C.

M. Evarts, a notary public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Harry D. Vandever, known to me to be the attorney in fact, and J. Homer Nishwitz, known to me to be the agent of the Fidelity and Deposit Company of Maryland, the corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as attorney in fact and agent, respectively.

[Seal] C. M. EVARTS,  
Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Original. No. A-101—Eq. In the District Court of the United States, for the Southern District of California, Southern Division. Frank M. McKey, Trustee in Bankruptcy of Tomlinson-Humes, Inc., Bankrupt, Complainant, vs. Eli P. Clark, and Los Angeles Warehouse Company, a Corporation, Respondents. Bond on Appeal. Bond Approved this 13 day of October, 1915. Oscar A. Trippet, Judge. Filed Oct. 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Mulford & Dryer & Wilbur Bassett, Suite 615 I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Complainant. [103]



*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

A-101.

FRANK M. McKEY, Trustee in Bankruptcy  
of TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Praecipe to Clerk [for Transcript of Record on  
Appeal].**

The clerk of said court will incorporate into the transcript upon the appeal appearing herein the following portions of the record upon said cause:

I.

The citations *be* issued herein requiring the respondents to appear in the Circuit Court of Appeals in the United States for the Ninth Circuit upon this appeal.

II.

The preliminary injunction granted herein, together with all orders extending or otherwise effecting same.

III.

The amended bill of complaint herein.

IV.

The answer of respondents to said bill.

## V.

The petition and motion of respondents for leave to file a cross-bill herein.

## VI. [104]

All minutes of the Court, and orders and decrees made in this cause.

## VII.

All certificates made by the clerk of this court with reference to the proceedings, rulings and decrees of the Court herein.

## VIII.

The petition for appeal herein; the order of the Court granting such appeal, and the appeal allowed; the assignments of errors of the complainant herein, and all orders of the Court in relation thereto.

## IX.

The certificate of the clerk to the correctness of the record on appeal herein.

## X.

The opinion and decision of Trippet, Judge herein.

## XI.

The statement upon appeal herein, together with all orders concerning the same.

## XII.

The decree herein.

Dated this 7th day of September, 1915.

WILBUR BASSETT,  
MULFORD and DRYER,  
Solicitors for Complainant.

[Endorsed]: Original. No. A-101. In the District Court of the United States for the Southern District of California, Southern Division. Frank

M. McKey, Trustee in Bankruptcy, etc., Complainant, vs. Eli P. Clark et al., Respondents. Praecepto to Clerk. Filed Sep. 7, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Mulford & Dryer and Wilbur Bassett, Suite 615, I. N. Van Nuys Building, Los Angeles, Cal., Attorneys for Complainant. [105]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

FRANK M. McKEY, Trustee in Bankruptcy  
of TOMLINSON-HUMES, INCORPORATED, Bankrupt,

Complainant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Respondents.

**Amended Praecepto to Clerk [As to Transcript on Appeal].**

The clerk of said court in making up the transcript on appeal herein will omit all mere orders of continuance except the order after judgment continuing in force the injunction herein, and for that purpose paragraph VI of the praecipe heretofore filed is now amended by adding the words: "Except mere orders of continuance."

WILBUR BASSETT,  
MULFORD & DRYER,  
Solicitors for Complainant.

[Endorsed]: A-101—Equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Frank M. McKey, et al., Complainant, vs. Eli P. Clark et al., Respondents. Amended Praeipe to Clerk. Wilbur Bassett, Attorney at Law, 446 Title Insurance Building. F2486—Main 5804. Los Angeles, Cal. Filed Dec. 20, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [106]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record.]**

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. A-101—EQUITY.

FRANK M. McKEY, Trustee in Bankruptcy  
of TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Complainant,

vs.

ELI P. CLARK and LOS ANGELES WAREHOUSE COMPANY, a Corporation,  
Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and six (106) typewritten pages, numbered from 1 to 106, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Minute Orders of December 17th,

1913, and January 6th, 1914, the Amended Bill of Complaint, Answer, Notice of Application for Leave to Amend Answer and File Counterclaim, Minute Orders of March 6th, 1914, and May 4th, 1914, Amended Answer, Preliminary Injunction, Minute Orders of July 17th, 1914, November 6th, 1914, July 21st, 1915, July 22d, 1915, August 2d, 1915, and August 5th, 1915, Decree, Minute Orders [107] of September 7th, 1915, September 10th, 1915, September 20th, 1915, September 27th, 1915, and October 4th, 1915, Statement on Appeal, Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Bond on Appeal, Praeceptum for Preparation of Transcript, and Amended Praeceptum, in the above and therein-entitled action, and that the same together constitute the record upon appeal of Frank M. McKey, Trustee in Bankruptcy, of Tomlinson-Humes, Incorporated, Bankrupt, herein, as specified in the Praeceptum and Amended Praeceptum for Preparation of Transcript filed in my office on behalf of appellant by his solicitors of record.

I DO HEREBY CERTIFY, that the cost of the foregoing Transcript Upon Appeal is \$52 90/100, the amount whereof has been paid me by Frank M. McKey, Trustee in Bankruptcy, of Tomlinson-Humes, Incorporated, Bankrupt, the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 24th day of December, in the year of our Lord one thousand nine hundred and fifteen, and of

our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,  
Clerk of the District Court of the United States of  
America, in and for the Southern District of  
California.

By Leslie S. Colyer,  
Deputy Clerk.

[Ten-cent Internal Revenue Stamp. Canceled  
12/24/15. L. S. C.] [108]

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[Endorsed]: No. 2721. United States Circuit  
Court of Appeals for the Ninth Circuit. Frank M.  
McKey, Trustee in Bankruptcy of Tomlinson-  
Humes, Incorporated, Bankrupt, Appellant, vs. Eli  
P. Clark and Los Angeles Warehouse Company, a  
Corporation, Appellees. Transcript of Record.  
Upon Appeal from the United States District Court  
for the Southern District of California, Southern Di-  
vision.

Filed December 29, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



[Order Enlarging Time to December 31, 1915, to  
Docket Cause and File Record Thereof.]

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*In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.*

FRANK M. McKEY, Trustee in Bankruptcy  
of TOMLINSON-HUMES, INCORPORATED,  
Bankrupt,

Appellant,

vs.

ELI P. CLARK, LOS ANGELES WAREHOUSE  
COMPANY, a Corporation,

Appellees.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 31st day of December, 1915.

Dated at Los Angeles, October 30th, 1915.

OSCAR A. TRIPPET,  
U. S. District Judge,

Southern District of California.

[Endorsed]: No. 2721. United States Circuit Court of Appeals for the Ninth Circuit. Frank McKey, Trustee, etc., Appellant, vs. Eli P. Clark, et al., Appellees. Order extending time to file record. Filed Nov. 1, 1915. F. D. Monckton, Clerk. Refiled Dec. 29, 1915. F. D. Monckton, Clerk.

